



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-69,110-03

EX PARTE SHANNON DWAYNE MOBLEY, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. CR2008-276 IN THE 207TH DISTRICT COURT
FROM COMAL COUNTY**

Per curiam.

ORDER

Pursuant to the provisions of Article 11.07 of the Texas Code of Criminal Procedure, the clerk of the trial court transmitted to this Court this application for a writ of habeas corpus. *Ex parte Young*, 418 S.W.2d 824, 826 (Tex. Crim. App. 1967). Applicant was convicted of possession of a controlled substance and sentenced to fifteen years' imprisonment. He did not appeal his conviction.

Applicant contends that his plea was involuntary because the plea agreement cannot be followed. It is clear from the record that Applicant pleaded guilty pursuant to a plea agreement that this sentence was to run concurrently with his federal sentence. Such an agreement cannot be enforced by State courts.

Applicant has alleged facts that, if true, might entitle him to relief. In these circumstances,

additional facts are needed. As we held in *Ex parte Rodriguez*, 334 S.W.2d 294, 294 (Tex. Crim. App. 1960), the trial court is the appropriate forum for findings of fact. The trial court shall determine whether this sentence is running concurrently with Applicant's federal sentence as ordered in the judgment. The trial court may use any means set out in TEX. CODE CRIM. PROC. art. 11.07, § 3(d). In the appropriate case, the trial court may rely on its personal recollection. *Id.*

If the trial court elects to hold a hearing, it shall determine whether Applicant is indigent. If Applicant is indigent and wishes to be represented by counsel, the trial court shall appoint an attorney to represent Applicant at the hearing. TEX. CODE CRIM. PROC. art. 26.04.

The trial court shall make a finding as to whether the federal sentence is running concurrently with the sentence in this case. The trial court shall also make any other findings of fact and conclusions of law that it deems relevant and appropriate to the disposition of Applicant's claim for habeas corpus relief.

This application will be held in abeyance until the trial court has resolved the fact issues. The issues shall be resolved within 90 days of this order. A supplemental transcript containing all affidavits and interrogatories or the transcription of the court reporter's notes from any hearing or deposition, along with the trial court's supplemental findings of fact and conclusions of law, shall be forwarded to this Court within 120 days of the date of this order. Any extensions of time shall be obtained from this Court.

Filed: February 6, 2013
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