



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-72,942-03

EX PARTE JAMES RAY MIKE, JR., Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. W06-30152-M (B) IN THE 194TH DISTRICT COURT
FROM DALLAS 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 aggravated assault¹ and sentenced to thirty-seven years' imprisonment. The Fifth Court of Appeals dismissed his appeal. *Mike v. State*, No. 05-08-00918-CR (Tex. App.—Dallas 2008, no pet.).

Applicant contends, among other things, that trial counsel rendered ineffective assistance

¹According to the indictment, Applicant was charged with aggravated assault by causing serious bodily injury to the complainant. There is no deadly weapon allegation in the indictment. But the judgment says that Applicant was convicted of "aggravated assault with deadly weapon."

because he failed to subpoena Ahmad Maarouf. The trial court found that this is a subsequent application under Article 11.07, § 4 of the Code of Criminal Procedure and recommended that we dismiss this application. In the -01 application, Applicant contended in a single ground that he was denied his right to an appeal. This was not a “challenge” to the conviction as contemplated by § 4. *Ex parte McPherson*, 32 S.W.3d 860, 861 (Tex. Crim. App. 2000). Accordingly, Applicant’s present claims are not procedurally barred by § 4, as the trial court found.

Applicant has alleged facts that, if true, might entitle him to relief. *Strickland v. Washington*, 466 U.S. 668 (1984); *Ex parte Patterson*, 993 S.W.2d 114, 115 (Tex. Crim. App. 1999). 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 order trial counsel to respond to Applicant’s above claim. The trial court may use any means set out in TEX. CODE CRIM. PROC. art. 11.07, § 3(d).

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 him at the hearing. TEX. CODE CRIM. PROC. art. 26.04.

The trial court shall first make findings of fact as to whether the exhibits Applicant cites in his memorandum were filed with his application but not forwarded to this Court with the habeas record. After reviewing counsel’s response and any exhibits that might have been filed but not forwarded with the habeas record, the trial court shall determine whether trial counsel’s conduct was deficient and, if so, whether Applicant was prejudiced. 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: November 27, 2013
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