



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-74,684-04

EX PARTE JEFFREY SCOTT FIELDS, Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 9034186 IN THE 390TH DISTRICT COURT
FROM TRAVIS 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 three counts of burglary of a habitation. He was sentenced to a term of life imprisonment on count one and to ninety-nine years' imprisonment in counts two and three. The Third Court of Appeals affirmed his convictions. *Fields v. State*, No. 03-04-00422-CR (Tex. App.—Austin Jul. 14, 2005) (unpublished).

Applicant's writ application raises many grounds for relief, including claims of prosecutorial misconduct and ineffective assistance of counsel.

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 claim of ineffective assistance of counsel. 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 findings of fact and conclusions of law as to whether the performance of Applicant's trial counsel was deficient and, if so, whether counsel's deficient performance prejudiced Applicant. The trial court shall make specific findings of fact addressing Applicant's claim that counsel was ineffective for not objecting to the shackling of Applicant, and for not preventing the jury panel from seeing Applicant's restraints. The trial court shall also make specific findings addressing Applicant's claim that counsel was ineffective for not pursuing DNA testing in an extraneous offense No. 3030178 to rebut the state's theory of a sexual assault. The trial court shall also make specific findings as to Applicant's claims that counsel was ineffective for opening the door to 404(b) evidence at trial and as to whether counsel was ineffective for not marshaling and presenting mitigation evidence concerning Applicant's mental health. The trial court shall also make specific findings addressing Applicant's claim that the state committed prosecutorial misconduct in presenting false evidence of a sexual assault extraneous offense that was abandoned after the trial due to DNA testing. 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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