



## IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-75,633-03

EX PARTE CHARLES DOUGLAS LAND, Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS  
CAUSE NO. 08F0035-102-A IN THE 102ND DISTRICT COURT  
FROM BOWIE 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 sexual assault of a child and sentenced to seventy-five years' imprisonment. The Sixth Court of Appeals affirmed his conviction. *Land v. State*, No. 06-09-0004-CR (Tex. App. – Texarkana, June 24, 2009, *pet. ref'd*).

Applicant contends, *inter alia*, that his trial counsel rendered ineffective assistance because counsel failed to object to an erroneous jury instruction about parole eligibility during the punishment phase, failed to file a motion to quash the defective amended indictment, failed to

communicate a thirty-five year plea offer to Applicant prior to the offer being withdrawn, and failed to file a motion requiring the State to elect a specific incident upon which it intended to rely for this conviction.

Applicant alleges that the jury charge at guilt/ innocence was defective because it failed to require a unanimity as to which incident the jury's verdict was based upon, and that the charge at punishment was defective because the jury was instructed incorrectly as to parole eligibility.

Finally, Applicant alleges that his appellate counsel was ineffective for failing to raise the issue of a non-unanimous jury verdict on direct appeal.

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 and appellate counsel to respond to Applicant's claims of ineffective assistance of counsel. The trial counsel may also obtain an affidavit from the trial prosecutor stating what plea offers were made to defense 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 first supplement the habeas record with a complete copy of the trial record, including copies of pre-trial motions, transcripts of all proceedings, and copies of the jury

charges at guilt/innocence and punishment. The trial court shall then make findings of fact and conclusions of law as to whether the jury charge at guilt/ innocence was defective in that it allowed for a non-unanimous verdict, and if so, whether Applicant was egregiously harmed by the defect. The trial court shall make findings as to whether the jury charge at punishment contained erroneous information regarding parole eligibility, as if so, whether Applicant was egregiously harmed by the error.

The trial court shall also make findings as to whether the performance of Applicant's trial counsel was deficient and, if so, whether counsel's deficient performance prejudiced Applicant, and as to whether the performance of Applicant's appellate counsel was deficient, and, if so, whether appellate counsel's deficient performance prejudiced Applicant. 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: September 26, 2012  
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