



## IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-75,937-03

**EX PARTE DOUGLAS ALAN DANZER, Applicant**

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS  
CAUSE NO. 9815138A IN THE 8<sup>TH</sup> JUDICIAL DISTRICT COURT  
FROM HOPKINS 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 writ of habeas corpus. *Ex parte Young*, 418 S.W.2d 824, 826 (Tex. Crim. App. 1967). Applicant pleaded guilty to aggravated sexual assault of a child and originally received ten years' deferred adjudication community supervision. His guilty was later adjudicated, and he was sentenced to sixty years' imprisonment. The Sixth Court of Appeals affirmed his conviction. *Danzer v. State*, No. 06-09-00113-CR (Tex. App. – Texarkana, April 16, 2010, *pet. ref'd*).

Applicant contends, *inter alia*, that his period of community supervision was improperly extended after it had expired. Although a judgment *nunc pro tunc* was entered by the trial court on

October 19, 2011, correcting the date of the original judgment from August 13, 1998 to August 27, 1998, there is conflicting information in the record regarding the date upon which Applicant's ten years of community supervision were to begin. If the period of community supervision began on August 13, 1998, as the order of probation states, then Applicant should have discharged his community supervision before the trial court entered the order extending the period of community supervision for an additional ten years, on August 20, 2008. Applicant alleges that he was not notified of the proceedings that led to the extension of his community supervision, and that he did not retain the attorney who signed the order extending his community supervision.

Applicant also alleges that his trial counsel rendered ineffective assistance because counsel failed to advise him that his period of community supervision might be extended, and that his adjudication counsel and appellate counsel were ineffective for failing to raise the issue of the improper extension of the period of community supervision.

Applicant has alleged facts that, if true, might entitle him to relief. *Strickland v. Washington*, 466 U.S. 668 (1984); *Ex parte Lemke*, 13 S.W.3d 791,795-96 (Tex. Crim. App. 2000). 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 obtain affidavits from Applicant's original trial counsel, the attorney who signed the order extending the period of community supervision, Applicant's adjudication counsel, and appellate counsel, responding to Applicant's claims 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 supplement the habeas record with transcripts of the original plea proceedings, any hearing on the State's motion to extend the period of Applicant's community supervision, and the adjudication proceedings in this case. The trial court shall also supplement the record with any documents that were reviewed by the court in making the decision to enter the judgment *nunc pro tunc* to change the date of the original judgment.

The trial court shall make findings of fact as to whether Applicant was notified of the State's motion to extend the period of community supervision, and if so, whether he was given the opportunity to be heard as to whether the period should be extended. The trial court shall make findings as to whether the attorney who signed the order extending the period of community supervision consulted with Applicant regarding the extension, and whether that attorney was aware of the possibility that Applicant had discharged his period of community supervision before the motion to extend the period was heard.

The trial court shall make findings as to whether Applicant's original trial counsel advised him of the consequences of the plea, including the possibility of having the period of community supervision extended. The trial court shall make findings as to whether Applicant's counsel at adjudication was aware of any issue with respect to the extension of Applicant's period of community supervision, and as to what advice counsel gave Applicant regarding his plea to the State's motion to adjudicate.

The trial court shall also make findings as to whether Applicant's appellate counsel was aware of any issue with respect to the extension of Applicant's period of community supervision,

and if so, why appellate counsel did not raise such issue on direct appeal.

The trial court shall make findings as to whether the performance of Applicant's trial attorney, adjudication attorney, and appellate attorney was deficient and, if so, whether 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. If any continuances are granted, a copy of the order granting the continuance shall be sent to this Court. 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 returned to this Court within 120 days of the date of this order. Any extensions of time shall be obtained from this Court.

Filed: December 14, 2011  
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