



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-75,987-04

EX PARTE REVAT RENE VARA, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 1061075-A IN THE 208TH DISTRICT COURT
FROM HARRIS 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 driving while intoxicated and sentenced to twenty-five years' imprisonment. The First Court of Appeals affirmed his conviction. *Vara v. State*, No. 01-07-00291-CR (Tex. App.—Houston [1st Dist.] 2008, pet. ref'd).

Applicant contends that trial counsel rendered ineffective assistance because he failed, among other things, to: (1) investigate the road where the field sobriety test was conducted; (2) retain or consult with an expert who specializes in treating people with bowed legs; and (3) object when

Applicant was impeached with misdemeanor convictions and prior arrests. Applicant also contends that counsel elicited that Applicant had fourteen prior convictions and lied to a police officer.

Without obtaining a response from trial counsel, the trial court made findings of fact and conclusions of law and recommended that we deny relief. The trial court found, among other things, that counsel conducted a thorough investigation of Applicant's case and made reasonable and strategic decisions after conducting a thorough investigation. These findings, however, have no basis in the record and are not sufficient to resolve Applicant's claims. Likewise, although derived from decisions from this Court and the U.S. Supreme Court, the trial court's conclusions of law are not sufficient to resolve Applicant's claims. They restate widely held principles, but in the absence of a response from counsel and a developed record, these principles have no bearing on counsel's conduct and strategy.

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 the above claims. 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 make further findings of fact and conclusions of law as to 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 claims 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 20, 2013
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