



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NOS. WR-76,596-01 & WR-76,596-02

EX PARTE CHAD LOUIS FURCH, Applicant

ON APPLICATIONS FOR WRITS OF HABEAS CORPUS
CAUSE NOS. 08-4-7871-A & 08-10-7987-A IN THE 24TH JUDICIAL DISTRICT COURT
FROM JACKSON 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 was convicted of one charge of assault with family violence, and one charge with one count of assault with family violence and one count of aggravated assault. Applicant was sentenced to fifteen years' imprisonment for the assault with family violence charge, and twenty years' imprisonment for the assault with family violence with the aggravated assault charge, to run consecutively. The Thirteenth Court of Appeals affirmed his convictions. *Furch v. State*, Nos. 13-09-00078-CR & 13-09-00077-CR (Tex. App. – Corpus Christi, August 23, 2010, pet. ref'd).

Applicant contends, *inter alia*, that his trial counsel rendered ineffective assistance because counsel failed to advise him about the consequences of waiving a jury trial and pleading not guilty to the trial court, allowed the two cases to be tried together but waived the right to concurrent sentences, failed to cross-examine the complainant, failed to investigate or file pre-trial discovery motions, failed to interview or call witnesses to impeach the State's evidence, failed to object when the State elicited testimony from witnesses regarding their opinions as to the truthfulness of the complainant and of Applicant, overrode Applicant's decision to testify on his own behalf, and failed to object when the State introduced evidence of a civil suit filed by Applicant shortly before trial.

Applicant also alleges that the State persuaded a witness to give false testimony against Applicant by offering to reinstate her driver's license and get her out of doing community service.

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 an affidavit from Applicant's trial counsel responding to Applicant's claims of ineffective assistance of counsel. The trial court shall also obtain an affidavit from the trial prosecutor stating whether any offers of benefits were made in exchange for the testimony of Dana Kimble, and if so, whether such offers were disclosed to the defense. 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 as to whether the performance of Applicant's trial attorney was deficient and, if so, whether counsel's deficient performance prejudiced Applicant. The trial court shall also make findings as to whether the testimony of Dana Kimble at Applicant's trial was secured by improper means, and as to whether her trial testimony is credible in light of her June 5, 2011 "recantation" affidavit. 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.

These applications 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: November 9, 2011
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