



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-76,635-03

EX PARTE JECIA JAVETTE MOSS, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 20203A-86 IN THE 86TH DISTRICT COURT
FROM KAUFMAN 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 pleaded guilty to aggravated assault, and originally received five years' deferred adjudication community supervision. She was later adjudicated guilty and sentenced to twelve years' imprisonment. She did not appeal her conviction.

Applicant contends, *inter alia*, that her community supervision was improperly revoked, because the motion to proceed to adjudication of guilt was not filed and *capias* did not issue until after the expiration of her period of community supervision. Applicant alleges that her adjudication

counsel was ineffective for failing to investigate and discover this issue, and for advising her to plead true at the adjudication. Applicant has alleged facts that, if true, might entitle her to relief. 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 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 in regard to Applicant's claim that her adjudication was improper. The trial court shall make findings as to when Applicant's period of deferred adjudication community supervision was due to expire, and as to when the State's motion to proceed to adjudication was filed. The trial court shall make findings as to when the *capias* issued, and as to when it was executed. The trial court shall make findings as to whether Applicant's counsel at adjudication investigated the facts of the case and discussed the facts and the applicable law with Applicant before she entered her plea of "true" to violating the conditions of community supervision. 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 18, 2013
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