



## IN THE COURT OF CRIMINAL APPEALS OF TEXAS

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NO. WR-76,652-01

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**EX PARTE ROBERT EARL POOLE, Applicant**

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**ON APPLICATION FOR A WRIT OF HABEAS CORPUS  
CAUSE NO. A090182AR IN THE 128<sup>TH</sup> JUDICIAL DISTRICT COURT  
FROM ORANGE COUNTY**

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*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 robbery and was sentenced to sixteen years' imprisonment. He did not appeal his conviction.

Applicant contends, *inter alia*, that his plea was involuntary because Applicant was not competent to enter a plea, and because his attorney coerced him into entering a plea by threatening him with a life sentence and the bringing of an additional charge. 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. 1997), 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 allegations. 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 copies of any and all plea papers, including any plea agreement, admonishments, waivers and stipulations, and a transcript of the plea hearing. The trial court shall also supplement the record with any documents relevant to the determination that Applicant was or was not competent to stand trial. The trial court shall make findings of fact and conclusions of law as to whether Applicant was found to be incompetent to stand trial, and if so, how and when he was restored to competency. The trial court shall make findings as to whether Applicant was advised of and understood the nature and consequences of his plea in this case. 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 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. 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 16, 2011

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