



## IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-76,916-01

**EX PARTE MAURICE HARTFIELD, Applicant**

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS  
CAUSE NO. 2009CR2039 IN THE 437TH DISTRICT COURT  
FROM BEXAR 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 two counts of intoxication assault and sentenced to fourteen years' imprisonment on each count. The Fourth Court of Appeals dismissed his appeal. *Hartfield v. State*, No. 04-11-00050-CR (Tex. App.—San Antonio March 16, 2011, no pet.).

On September 12, 2012, we remanded this application and directed the trial court to make findings of fact and conclusions of law. We now withdraw our September 12 order and substitute the present one.

On February 1, 2012, we remanded this application and directed the trial court to determine whether Applicant received ineffective assistance of counsel and multiple punishments for the same offense in violation of the Double Jeopardy Clause. *Strickland v. Washington*, 466 U.S. 668 (1984); *Brown v. Ohio*, 432 U.S. 161 (1977); *Ex parte Ervin*, 991 S.W.2d 804 (Tex. Crim. App. 1999). On remand, the trial court found that there is a clerical mistake in the judgments and that Applicant in fact pleaded guilty to intoxication assault and aggravated assault. The trial court also concluded that Applicant's sentences violate the Double Jeopardy Clause and that counsel rendered ineffective assistance by not mentioning during the plea proceeding that Applicant's sentences would violate the Double Jeopardy Clause. The trial court recommended that we set aside count two. We believe the record is not sufficient to resolve these claims.

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).

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: (1) counsel advised Applicant before pleading guilty that his sentences would violate the Double Jeopardy Clause; (2) by pleading guilty Applicant knowingly waived a double jeopardy claim, *Ex parte Birdwell*, 7 S.W.3d 160 (Tex. Crim. App. 1999); and (3) if counsel failed to advise him that his sentences would violate the Double Jeopardy Clause, Applicant would have insisted on a trial. 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 these claims.

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: March 6, 2013

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