



# IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NOS. WR-76,956-05 & -06

**EX PARTE BRUCE WILLIAM MACON, Applicant**

**ON APPLICATIONS FOR A WRIT OF HABEAS CORPUS  
CAUSE NOS. F-0900206-H & F-0900207-H  
IN CRIMINAL DISTRICT COURT NO. 1  
FROM DALLAS 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 these applications 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 unlawful restraint and sentenced to forty years' imprisonment on each count. The Fifth Court of Appeals affirmed his convictions. *Macon v. State*, Nos. 05-09-00511-CR & 05-09-00512-CR (Tex. App.—Dallas 2010, no pet.).

Applicant contends, among other things, that counsel was ineffective at the plea bargaining and guilt stages of his case. On October 31, 2012, we remanded these applications and directed the

trial court to determine when they were delivered to prison authorities and whether they were filed before the -03 and -04 applications were denied. If the trial court determined that these applications were filed before the -03 and -04 applications were denied, we also directed it to make findings of fact and conclusions of law in response to Applicant's claims. We also cited *Campbell v. State* in our remand order. In that case, we held that the "pleadings of *pro se* inmates shall be deemed filed at the time they are delivered to prison authorities for forwarding to the court clerk." 320 S.W.3d 338, 344 (Tex. Crim. App. 2010).

On remand, the trial court found that the prison unit where Applicant is confined received his applications for mailing on August 16, 2012. Under *Campbell*, his applications were filed on August 16, 2012, before we denied the -03 and -04 applications. The trial court concluded, however, that these are subsequent applications and stated that it would not make findings and conclusions in response to Applicant's claims. The trial court's conclusion is not consistent with *Campbell* or the provisions of § 4 in Article 11.07 of the Code of Criminal Procedure.<sup>1</sup>

Applicant has alleged facts that, if true, might entitle him to relief. *Strickland v. Washington*, 466 U.S. 668 (1984). 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 Applicant's ineffective assistance of counsel claims. The trial court may use any means set out in TEX. CODE CRIM. PROC. art. 11.07, § 3(d).

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<sup>1</sup>Under § 4(a), if a subsequent application for a writ of habeas corpus is filed after final disposition of an initial application challenging the same conviction, a court may not consider the merits of or grant relief based on the subsequent application unless an applicant satisfies one of the exceptions in § 4. The present applications were filed before there was a final disposition.

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 findings and conclusions as to whether counsel's conduct at the plea bargaining and guilt stages was deficient. If the trial court concludes that his conduct was deficient at the plea bargaining stage, the trial court shall determine whether there is a reasonable probability that Applicant would have accepted a plea offer for twenty years and that the trial court would have accepted his guilty plea. *Lafler v. Cooper*, 132 S. Ct. 1376, 1391 (2012). If the trial court concludes that counsel's conduct at the guilt stage was deficient, the trial court shall determine whether there is a reasonable probability that the result would have been different. 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. 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.

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