



## IN THE COURT OF CRIMINAL APPEALS OF TEXAS

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NO. WR-77,507-01

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**EX PARTE EMANUEL LEE FARRIS, Applicant**

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**ON APPLICATION FOR A WRIT OF HABEAS CORPUS  
CAUSE NO. D-35,694-A IN THE 358<sup>TH</sup> JUDICIAL DISTRICT COURT  
FROM ECTOR 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 was convicted of possession with intent to deliver a controlled substance and sentenced to thirty years' imprisonment. The Eleventh Court of Appeals affirmed his conviction. *Farris v. State*, No. 11-09-00145-CR (Tex. App. – Eastland, May 12, 2011).

Applicant contends that his appellate counsel rendered ineffective assistance because counsel failed to raise issues relating to an unconstitutional search and seizure on appeal, and because

counsel failed to timely notify Applicant that his conviction had been affirmed.

Applicant has alleged facts that, if true, might entitle him to relief. *Strickland v. Washington*, 466 U.S. 608 (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 appellate counsel responding to Applicant's claims of ineffective assistance of counsel on appeal. 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 Applicant's appellate counsel timely informed Applicant that his conviction had been affirmed. The trial court shall also make findings as to whether the performance of appellate counsel was deficient, and if so, whether Applicant was prejudiced by appellate counsel's alleged deficiency. 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. 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: May 2, 2012  
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