



## IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-77,670-01

EX PARTE EARL STEPP, Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS  
CAUSE NO. F-2010-1176-E IN THE 367<sup>TH</sup> DISTRICT COURT  
FROM DENTON 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 one count of aggravated assault and one count of assault family violence. He was sentenced to twelve years' imprisonment on each count. He did not appeal his conviction.

Applicant contends, *inter alia*, that his plea was involuntary because counsel told him that if he went to trial, the two cases could have been ordered to run consecutively, causing him to receive the equivalent of a forty-year sentence. As indicted, the aggravated assault is a second-degree felony and the family violence assault is a third-degree felony. Applicant has alleged facts

that, if true, might entitle him to relief. *Strickland v. Washington*, 466 U.S. 668 (1984); *Ex parte Patterson*, 993 S.W.2d 114, 115 (Tex. Crim. App. 1999). The State and trial court agree that Applicant's conviction in the assault family violence case should be vacated because it violates principles of double jeopardy. The habeas record also reflects that Applicant's sentence in that case exceeds the applicable range of punishment. 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 claim of ineffective assistance of counsel. 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 his plea was involuntary. The trial court shall make specific findings as to how counsel advised Applicant concerning the ranges of punishment he faced and the possibility of consecutive sentences. The trial court shall also make specific findings as to how or whether counsel advised Applicant of the likelihood that the state could lawfully convict Applicant of both offenses as charged. 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: November 7, 2012

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