



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NOS. WR-77,822-08, WR-77,822-09, WR-77,822-10, WR-77,822-11, WR-77,822-12, WR-77,822-13, WR-77,822-14, WR-77,822-15, WR-77,822-16, WR-77,822-17, WR-77,822-18, WR-77,822-19, WR-77,822-20, WR-77,822-21, WR-77,822-22

EX PARTE DALE ROY SLAVEN, Applicant

**ON APPLICATIONS FOR WRITS OF HABEAS CORPUS
CAUSE NOS. 1178932D, 1179729D, 1179773D, 1179775D, 1180003D, 1180828D, 1180830D,
1180831D, 1180832D, 1180835D, 1180839D, 1180843D, 1181417D, 1183392D, 1183501D
IN THE CRIMINAL DISTRICT COURT #2
FROM TARRANT 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 application for writs of habeas corpus. *Ex parte Young*, 418 S.W.2d 824, 826 (Tex. Crim. App. 1967). Applicant entered open pleas of guilty to eight charges of aggravated robbery, six counts of robbery and one count of forgery, all enhanced by prior sequential felony convictions. He was sentenced to sixty years' imprisonment for each of the aggravated robbery and robbery charges, and twenty years' imprisonment for the forgery charge, all running concurrently with each other but consecutively with Applicant's prior sentences for

which he was apparently out on parole when he committed these offenses. The Second Court of Appeals affirmed his convictions. *Slaven v. State*, Nos. 02-10-00413-CR through 02-10-00427-CR (Tex. App. – Fort Worth, May 31, 2012, *pet ref'd*).

Applicant contends, among other things,¹ that his guilty pleas were not knowingly and voluntarily entered, because he entered the open pleas on the erroneous advice of trial counsel. Applicant alleges that trial counsel advised him to reject the State's forty-year plea offer and enter an open plea to the trial court, telling him that he would receive the minimum sentence(s). Applicant alleges that trial counsel mis-advised him regarding his parole eligibility, and failed to advise him of the consequences of the affirmative deadly weapon allegations and the enhancement allegations. Applicant alleges that trial counsel failed to communicate with him or keep him apprised of the status of the case prior to trial.

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). 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. It appears that Applicant's trial attorney was disbarred shortly after his representation of Applicant in these cases. Therefore, it may not be possible for the trial court to obtain an affidavit from trial counsel responding to Applicant's allegations. However, if possible, the trial court shall order trial counsel to respond to Applicant's claims 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.*

¹This Court has reviewed Applicant's other claims and found them to be without merit.

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 a copy of the plea and sentencing transcripts, and any pre-trial motions or other pleadings filed in these cases. The trial court shall make findings of fact and conclusions of law as to whether the performance of Applicant's trial counsel was deficient and, if so, whether counsel's deficient performance prejudiced Applicant. The trial court shall make findings as to whether Applicant's open pleas were knowingly and voluntarily entered. 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.

Filed: November 27, 2013
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