



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NOS. WR-77,923-01 AND WR-77,923-02

EX PARTE JAMES TERRY SHELNUTT, Applicant

**ON APPLICATIONS FOR WRITS OF HABEAS CORPUS
CAUSE NOS. 59,233-D AND 59,234-D IN THE 320TH DISTRICT COURT
FROM POTTER 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 murders and was sentenced to two concurrent terms of life in prison. The Seventh Court of Appeals affirmed the convictions, as modified, in two unpublished opinions. *Shelnett v. State*, Nos. 07-10-0322-CR and 07-10-0098-CR (Tex. App. – Amarillo del. May 12, 2011).

Applicant contends he was not timely notified of the appellate court's decisions, and he complains he was not informed of his right to pursue *pro se* petitions for discretionary review from

them. *See Ex parte Wilson*, 956 S.W.2d 25 (Tex. Crim. App. 1997); *Ex parte Riley*, 193 S.W.3d 900 (Tex. Crim. App. 2006). Appellate counsel has submitted affidavits stating he did provide Applicant with a copy of the decisions, and he states he informed Applicant of his PDR rights in a letter accompanying the decisions. Counsel has also submitted a copy of the letter with his affidavits. Applicant, however, states he never received the letter, and he asserts he remained unaware of the appellate decisions until counsel informed him by letter that the mandates had issued. There are no credibility determinations or findings from the trial court, and there is no evidence, such as prison mail logs, indicating whether Applicant received legal mail from appellate counsel after the date counsel indicates the correspondence was mailed.

Applicant has alleged facts that, if true, might entitle him to relief. *Strickland v. Washington*, 466 U.S. 668 (1984); *Ex parte Wilson*, 956 S.W.2d at 25; *Ex parte Riley*, 193 S.W.3d at 900. 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 resolve the issue of whether Applicant received the correspondence counsel states he mailed. To resolve the issue, 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 Applicant at the hearing. TEX. CODE CRIM. PROC. art. 26.04.

The trial court shall make findings of fact and conclusions of law as to whether Applicant was deprived his right to file petitions for discretionary review through no fault of his own. The trial

court may also make any other findings of fact and conclusions of law that it deems relevant and appropriate to the disposition of Applicant's claims 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. Supplemental transcripts 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: August 22, 2012
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