



## IN THE COURT OF CRIMINAL APPEALS OF TEXAS

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NO. WR-77,984-02

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**EX PARTE ALFREDO PECINA, Applicant**

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**ON APPLICATION FOR A WRIT OF HABEAS CORPUS  
CAUSE NO. B17667-0806 IN THE 64<sup>TH</sup> DISTRICT COURT  
FROM HALE 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 a writ of habeas corpus. *Ex parte Young*, 418 S.W.2d 824, 826 (Tex. Crim. App. 1967). Applicant was convicted of aggravated assault with a deadly weapon and sentenced to eleven years' imprisonment. The Seventh Court of Appeals affirmed his conviction. *Pecina v. State*, No. 07-11-00504-CR (Tex. App.—Amarillo Jun. 8, 2012) (unpublished).

Applicant contends that his plea was involuntary because counsel did not explain the legal and factual differences between felony aggravated assault and misdemeanor assault. Though he was charged with causing bodily injury with a deadly weapon, he disputes the deadly weapon allegation.

He alleges that, had counsel discovered or explained the difference between the allegations and the facts, applicant would not have pleaded guilty. He also alleges that counsel's failure to investigate and discover a third-party witness was ineffective and caused his plea to be involuntary. Applicant has alleged facts that, if true, might entitle him to relief. 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 claims that his plea was involuntary. The trial court shall make specific findings of fact determining whether counsel fully and adequately investigated the facts and explained the applicable law to Applicant. 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 claims 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: January 9, 2013

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