



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-78,041-01

EX PARTE CARLOS GOMEZ, Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. D-1-DC-06-301119-A IN THE 147TH DISTRICT COURT
FROM TRAVIS 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 pleaded guilty to aggravated sexual assault of a child, and was sentenced to thirty years' imprisonment. He did not appeal his conviction.

Applicant contends, *inter alia*, that his plea was involuntary because he did not speak any English, because trial counsel did not translate or explain the plea agreement to Applicant, but merely instructed him to sign and to respond affirmatively to the trial court when asked if he was pleading guilty knowingly and voluntarily, and because the trial court never directly addressed Applicant to determine whether he understood the nature and consequences of the plea. Applicant

also alleges that neither trial counsel nor the trial court explained to him the immigration consequences of his plea. Although the plea papers contain acknowledgments by Applicant that he understood the nature and consequences of his plea, Applicant alleges that he did not understand the documents, and that they were never translated or explained to him.

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 obtain an affidavit from trial counsel responding to Applicant's allegations of ineffective assistance of counsel. The trial court may also 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 first supplement the habeas record with a transcript of the plea proceedings in this case. The trial court shall then 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 whether Applicant was correctly admonished as to the immigration consequences of his plea in this case, and as to whether the plea admonishments were translated 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 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: October 31, 2012

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