



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-78,054-01

EX PARTE JEFFERY GORDON NICKERSON, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 33777 IN THE 33RD DISTRICT COURT
FROM BURNET 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 manufacture of controlled substances, possession of controlled substances, and possession of certain chemicals with intent to manufacture controlled substances. He was sentenced to two twenty-year sentences and one ten-year sentence. He did not appeal his convictions.

Applicant contends, *inter alia*, that the convictions for manufacturing a controlled substance and possession of a controlled substance violate principles of double jeopardy. He also alleges that his plea was involuntary because he did not understand that convictions for both manufacturing and

possession of a controlled substance could have violated double jeopardy. Applicant has alleged facts that, if true, might entitle him to relief. *Weinn v. State*, 326 S.W.3d 189, 194 (Tex. Crim. App. 2010). 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 convictions violate double jeopardy and that his plea was involuntary due to counsel's ineffectiveness. The trial court shall make specific findings of fact addressing whether Applicant's convictions for manufacturing and possessing methamphetamine were supported by evidence of a single quantity of controlled substance or whether there was evidence of different caches of controlled substances in sufficient quantities to support the convictions. 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 14, 2012
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