



## IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-78,210-01

**EX PARTE CHARLES RAY SAULSBERRY, Applicant**

ON APPLICATION FOR A WRIT OF HABEAS CORPUS  
CAUSE NO. 123466101010 IN THE 209<sup>TH</sup> DISTRICT COURT  
FROM HARRIS 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 felon in possession of a firearm and sentenced to two years' imprisonment. He did not appeal his conviction.

Applicant contends that his plea was involuntary because trial counsel did not move to suppress a firearm that was seized without a warrant. Applicant alleges that the police initially seized him outside of apartments and "illegally" found cocaine in his pocket. He alleges they then entered his apartment without a warrant where marihuana was present in plain view on a table. Applicant contends that police eventually found the firearm he was charged with possessing after searching through clothes in a closet. Applicant has alleged facts that, if true, might entitle him to relief.

*Strickland v. Washington*, 466 U.S. 668 (1984). 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).

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 trial counsel should have moved to suppress the firearm Applicant was accused of possessing. The trial court shall make specific findings addressing the legality of the seizure and counsel's actions or inactions in representing 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.