



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-78,270-01

EX PARTE RICKEY DON WILLIAMS, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 17440-B IN THE 104TH DISTRICT COURT
FROM TAYLOR 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 possession of marijuana in a drug free zone, and originally received ten years, probated. His probation was later revoked, and he was sentenced to ten years' imprisonment. He did not appeal his conviction.

Applicant contends, *inter alia*, that his trial counsel rendered ineffective assistance because counsel failed to investigate, failed to object to a defective indictment, and advised Applicant to plead guilty. Applicant alleges that he would not have pleaded guilty but for counsel's erroneous advice.

On October 3, 2012, this Court remanded this matter to the trial court to obtain an affidavit from trial counsel, enter findings of fact addressing Applicant's claims, and supplement the record with copies of the plea documents. On November 19, 2012, this Court received the trial court's findings of fact and conclusions of law, which are based on the plea papers and on the trial court's own recollection of the revocation hearing. However, the plea papers upon which the trial court relied are not in the supplemental record, and trial counsel has not submitted an affidavit responding to Applicant's claims. Furthermore, the trial court's findings specifically address counsel's performance at the revocation hearing, but do not discuss trial counsel's investigation and preparation, or his advice to Applicant at the original plea.

Because the supplemental record is insufficient to fully address Applicant's allegations, the trial court shall order trial counsel to respond to Applicant's claims of ineffective assistance of counsel. In addition, the trial court shall again order the district clerk to supplement the habeas record with copies of the plea documents, including the admonishments, the stipulation of evidence, and any other evidence introduced to support the original plea.

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 supplement the habeas record with copies of the plea documents in this case, including the admonishments, waivers and stipulations, judicial confession, any evidence introduced to support the plea, and any written plea agreement that exists. The trial court shall make findings of fact as to what investigation trial counsel performed before advising Applicant to plead guilty to the charges. The trial court shall make findings of fact as to whether counsel investigated

the quantity of marihuana with which Applicant was arrested, and as to whether he investigated the validity of the drug free zone allegation. The trial court shall make findings of fact and conclusions of law as to whether the performance of Applicant's trial counsel was deficient and, if so, whether counsel's deficient performance prejudiced 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: January 9, 2013
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