



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NOS. WR-78,279-01, WR-78,279-02, WR-78,279-03 & WR-78,279-04

EX PARTE JIM HOWARD, III, Applicant

ON APPLICATIONS FOR WRITS OF HABEAS CORPUS
CAUSE NOS. 09-CR-1076-83-1, 09-CR-1077-83-1, 09-CR-1078-83-1 & 09-CR-1079-83-1
IN THE 122ND DISTRICT COURT FROM GALVESTON 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 entered open pleas of guilty to two charges of intoxication manslaughter and two charges of intoxication assault. He was sentenced to life imprisonment for each of the intoxication manslaughter charges, and twenty years' imprisonment for each of the intoxication assault charges. The Fourteenth Court of Appeals affirmed his convictions. *Howard v. State*, Nos. 14-10-01093-CR, 14-10-01094-CR, 14-10-01095-CR & 14-10-01096-CR (Tex. App. – Houston [14th Dist.] December 1, 2011).

Applicant contends, *inter alia*, that his trial counsel rendered ineffective assistance because

counsel failed to challenge the legality of Applicant's arrest and the validity of his consent to draw blood, failed to challenge the validity of the blood alcohol test results, failed to present evidence to support the imposition of less than the maximum sentences, failed to invoke "the rule," failed to object when the trial court prevented Applicant from presenting character witnesses, and failed to preserve issues for appeal.

Applicant has alleged facts that, if true, might entitle to relief. *Strickland v. Washington*, 466 U.S. 668 (1984); *Ex parte Patterson*, 993 S.W.2d 114, 115 (Tex. Crim. App. 1999). 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 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: October 10, 2012

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