



## IN THE COURT OF CRIMINAL APPEALS OF TEXAS

**NO. WR-78,298-01**

**EX PARTE JOHNNIE DEMPSEY WOOD, Applicant**

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS  
CAUSE NO. 3801 IN THE 394<sup>TH</sup> DISTRICT COURT  
FROM BREWSTER 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 family violence assault and aggravated assault. He was sentenced to fifteen year's incarceration for family violence and thirty years' imprisonment for aggravated assault. The Eighth Court of Appeals affirmed his convictions. *Wood v. State*, No. 08-07-00001-CR (Tex. App.—El Paso December 18, 2009).

Applicant contends that he was incompetent to stand trial and that his trial counsel rendered ineffective assistance by failing to have him evaluated for competency.

Applicant has alleged facts that, if true, might entitle him 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).

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 as to whether Applicant's behavior or actions should have led counsel to believe he might not be competent to stand trial. The trial court shall make findings as to whether Applicant was evaluated for competency prior to trial and if not, why not. 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.