



## IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-78,320-01

**EX PARTE RHEASHAD LAMAR LOTT, Applicant**

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS  
CAUSE NO. F-0900780-I IN THE CRIMINAL DISTRICT COURT NO. 2  
FROM DALLAS 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 engaging in organized criminal activity, and he was sentenced to seventy years' incarceration. The Fifth Court of Appeals affirmed the conviction in an unpublished opinion. *Lott v. State*, No. 05-09-01098-CR (Tex.App.—Dallas del. Jun. 29, 2011).

Applicant raises multiple claims, including claims of actual innocence, no evidence, appellate court error, ineffective assistance of trial and appellate counsel, due process violations, and prosecutorial misconduct. With regard to his ineffective assistance of trial counsel claims for failing

to request an accomplice witness instruction and for failing to impeach several witnesses, such as Jones, Reagan, Holloway, Anderson, and Dority, with their prior inconsistent statements, 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). This Court's independent review of Applicant's remaining claims reveals them to lack merit.

There is no response from trial counsel in the record provided to this Court, and there are no findings from the trial court. 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 the above described claims of ineffective assistance by explaining counsel's representation of Applicant, including applicable strategy and tactical decisions. To obtain the response, 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 regarding whether trial counsel was deficient and whether Applicant suffered harm. The trial court may also make any other findings of fact and conclusions of law it deems relevant and appropriate to the disposition of Applicant's claims 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 24, 2012

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