



## IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-78,460-02

**EX PARTE CHESTER LEE MINOR, Applicant**

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS  
CAUSE NO. 00873-D IN THE 350TH 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 was convicted of escape and sentenced to twelve years' imprisonment. He did not appeal his conviction.

Applicant contends, among other things,<sup>1</sup> that his trial counsel rendered ineffective assistance because counsel allowed this charge to be tried with a burglary of a motor vehicle charge, which arose from the same criminal episode as this offense, but did not object when the trial court

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<sup>1</sup>This Court has reviewed Applicant's other claims, and finds them to be without merit.

cumulated the sentences in the two cases. The record reflects that Applicant committed the escape when he was being arrested for the burglary of a motor vehicle, which had apparently occurred a few hours earlier on the same date. There is nothing in the record to show how or why the two offenses could be considered anything but part of the same criminal episode. Under Section 3.03 of the Texas Penal Code, when a defendant is found guilty of more than one offense arising out of the same criminal episode and prosecuted in a single action, the sentences shall run concurrently (with some exceptions that do not apply to the offenses in this case).

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. Trial counsel shall explain why she allowed the two charges to be consolidated for trial, but did not object to the cumulation of the sentences. 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 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: December 18, 2013  
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