



## IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-78,490-02

EX PARTE NANCY GAIL KNIGHT, Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS  
CAUSE NO. 53220-02-A IN THE 47TH DISTRICT COURT  
FROM POTTER 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 unlawful possession of a firearm by a felon, and was sentenced to fifteen years' imprisonment, cumulated with a previous fifty-five year sentence for possession of a controlled substance in a drug-free zone. She waived her right to appeal.

Applicant contends, *inter alia*, that there was no evidence to support the trial court's entry of a cumulation order in this case, and no evidence to support the imposition of attorney's fees in the bill of costs. Applicant was apparently determined to be indigent and appointed counsel to represent

her at trial. There is no indication in the habeas record of whether the trial court complied with the requirements of Article 26.05(g) of the Texas Code of Criminal Procedure by making a determination that Applicant had the financial resources to enable her to pay for the legal services provided by trial counsel before such fees were imposed.

During the sentencing hearing after Applicant pleaded guilty to this offense, the prosecutor advised the trial court that cumulation of this sentence with Applicant's prior sentence was mandatory, because of the drug-free zone allegation in the prior case. The trial court ordered Applicant's fifteen-year sentence in this case to run consecutively with her prior fifty-five year sentence, without objection from defense counsel.

Applicant has alleged facts that, if true, might entitle her to relief. In these circumstances, additional facts are needed. *Armstrong v. State*, 340 S.W.3d 759, 767 (Tex. Crim. App. 2011); *Mayer v. State*, 309 S.W.3d 552, 556 (Tex. Crim. App. 2010). 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 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 Applicant was declared indigent at the time of her trial, and if so, whether any determination as to Applicant's ability to pay was made prior to the imposition of attorney's fees in the bill of costs. The trial court shall make findings as to whether Applicant had the opportunity to appeal from the imposition of

the fees. The trial court shall also make findings as to whether the punishment in Applicant's prior possession of a controlled substance in a drug-free zone conviction was actually increased under Section 481.134 of the Texas Health and Safety Code, making cumulation mandatory in this case. In addition, the trial court shall make findings as to whether the court would have cumulated Applicant's sentences but for the prosecutor's representation that the cumulation was mandatory. 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 16, 2013  
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