



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-78,606-01

EX PARTE JOHN MATTHEW SWEATMAN, Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 09301 IN THE 90TH DISTRICT COURT
FROM YOUNG 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 an open plea of guilty to driving while intoxicated, and was sentenced to sixteen years' imprisonment. The Second Court of Appeals affirmed his conviction. *Sweatman v. State*, No. 02-10-00309-CR (Tex. App. – Fort Worth, April 21, 2011, *pet. ref'd*).

Applicant contends that his trial counsel rendered ineffective assistance because counsel failed to review the evidence with Applicant prior to trial, advised him that they could “beat” the deadly weapon allegation, but then failed to challenge the deadly weapon evidence at trial, failed to

object to evidence of extraneous bad acts, failed to call character witnesses who were present and willing to testify on Applicant's behalf, and failed to seek recusal of the trial judge. Applicant also alleges that his first attorney, who was replaced before trial, erroneously informed the prosecutor that Applicant had been held for a long period of time without an indictment being returned. By doing so, Applicant alleges that counsel forfeited Applicant's right to seek dismissal of the charges under Article 32.01 of the Texas Code of Criminal Procedure.

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 both of Applicant's trial attorneys to respond to Applicant's claims 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: December 19, 2012
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