



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-78,683-01

EX PARTE PETER LEON SELLERS, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 11CR0262 IN THE 405th DISTRICT COURT
FROM GALVESTON 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, was convicted of delivery of a controlled substance, and sentenced to five years' imprisonment. Applicant did not appeal his conviction.

Applicant contends that his due process rights were violated because a forensic scientist did not follow accepted standards when analyzing evidence in his case. He alleges that a Texas Department of Public Safety (DPS) investigation supports his claim, but the writ record contains no such report. The State and trial court agree that Applicant is entitled to relief, but this Court needs

more information before addressing the claim on its merits.

Applicant has alleged facts that, if true, might entitle him to relief. 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 may use any means set out in TEX. CODE CRIM. PROC. art. 11.07, § 3(d).

It appears that Applicant is represented by counsel. If the trial court elects to hold a hearing, it shall determine if Applicant is represented by counsel, and if not, 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 supplement the writ record with the investigative report from DPS and any other documentation supporting its agreed findings of fact. The trial court shall provide support for its finding that the forensic examiner in this particular case was the examiner who was found to be unreliable by the DPS investigation. The trial court shall also determine whether there is more drug evidence that could be tested, or whether any other analyst was involved in the testing of the evidence in this case. If another analyst was involved in the testing for this case, the trial court shall make findings regarding the actions of each individual analyst. Additionally, the trial court shall determine whether any additional testing was ever done on the evidence in this case, either before or after the initial proceedings in this case. 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.

The parties are reminded that under certain circumstances, an applicant may be eligible for release on bond under Article 11.65 of the Code of Criminal Procedure.

This application will be held in abeyance until the trial court has resolved the fact issues. The issues shall be resolved within 30 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 60 days of the date of this order. Any extensions of time shall be obtained from this Court.

Filed: December 5, 2012
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