



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-78,989-01

EX PARTE STEVEN MARK WEINSTEIN, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 1167730 IN THE 339TH DISTRICT COURT
FROM HARRIS 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 murder and sentenced to thirty years' imprisonment. The Fourteenth Court of Appeals affirmed his conviction. *Weinstein v. State*, No. 14-08-01149-CR (Tex. App.—Houston [14th Dist.] 2010, pet. ref'd).

Applicant contends, among other things, that the State used or relied on false testimony. After holding a live evidentiary hearing, the trial court made detailed findings of fact and conclusions of law. The trial court made, however, no findings and conclusions on Applicant's false testimony

claim.¹

Applicant has alleged facts that, if true, might entitle him to relief. *Ex parte Chabot*, 300 S.W.3d 768 (Tex. Crim. App. 2009); *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.

Applicant appears to be represented by counsel. If he is not and the trial court elects to hold another evidentiary 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 him at the hearing. TEX. CODE CRIM. PROC. art. 26.04.

The trial court shall make further findings and conclusions as to whether Nathan Adams's testimony was false and, if so, whether Applicant has shown that there is a reasonable likelihood that Adams's testimony affected the judgment of the jury and that the error more likely than not contributed to Applicant's conviction or punishment.

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

¹In its response to Applicant's objections to the trial court's findings and conclusions, the State writes that an "examination of the trial court's findings and conclusions reveals that the court's analysis is consistent with this Court's unknowing use of false testimony jurisprudence." We are not persuaded that the trial court made findings and conclusions on Applicant's false testimony claim, and we are not willing to speculate. The trial court made explicit findings and conclusions on Applicant's other grounds, but we were not able to find the words "false testimony" in its findings and conclusions.

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: June 5, 2013
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