



## IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-78,997-01

EX PARTE FRANK GAYTAN, Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS  
CAUSE NO. CR2008-134 IN THE 207TH DISTRICT COURT  
FROM COMAL 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 twenty counts of aggravated sexual assault and one count of indecency with a child. He was sentenced to imprisonment for ninety-nine years on each sexual assault count and fifteen years on the indecency count. The Third Court of Appeals affirmed his convictions. *Gaytan v. State*, No. 03-09-00370-CR (Tex. App.—Austin 2011, pet. ref'd).

Applicant contends, among other things, that he was incompetent to stand trial. 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 shall order trial counsel to respond and state whether he believed Applicant was incompetent to stand trial. 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 him 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 incompetent to stand trial. 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: February 13, 2013  
Do not publish