



## IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-79,087-01

**EX PARTE OTIS ELMER TAYLOR, JR., Applicant**

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS  
CAUSE NO. 17270A IN THE 2ND DISTRICT COURT  
FROM CHEROKEE 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 two counts of sexual assault of a child and one count of indecency with a child by contact, and was sentenced to twelve years' imprisonment. He did not appeal his conviction.

Applicant contends that his trial counsel rendered ineffective assistance because counsel did not investigate or prepare a defense, did not meet with Applicant to discuss the case until the day before trial, did not advise Applicant of an eight-year plea offer until the day before trial, and did not advise Applicant that there was a time limit on the plea offer. Applicant alleges that he declined the

eight-year offer, believing that counsel would defend him at trial. Applicant alleges that counsel told him on the morning of trial that he was not prepared to defend Applicant, and that Applicant felt compelled to accept the State's plea offer. However, Applicant alleges that the State had withdrawn the eight-year plea offer, and that the only offer available at that time was for twelve years' imprisonment, which he felt he had no option but to accept.

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 trial counsel to respond to Applicant's claim of ineffective assistance of counsel. The trial court may use any means set out in TEX. CODE CRIM. PROC. art. 11.07, § 3(d).

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 as to whether trial counsel investigated and consulted with Applicant about the case prior to trial. The trial court shall make findings as to whether the State extended an eight-year plea offer, and if so, when that offer was first extended, and whether there was a deadline for acceptance of that offer. The trial court shall make findings as to whether trial counsel timely communicated the plea offer to Applicant, and as to what advice counsel gave to Applicant regarding the plea offer. The trial court shall make findings as to whether counsel was prepared to defend Applicant on the day of trial, and as to whether counsel advised Applicant to accept the State's new plea offer of twelve years' imprisonment. The trial court shall make

findings 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: March 6, 2013  
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