



## IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-79,164-01

**EX PARTE ERIC DESHON SORRELLS, Applicant**

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS**  
**CAUSE NO. D-1-DC-05-200527-A IN THE 331st DISTRICT COURT**  
**FROM TRAVIS 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 aggravated robbery and sentenced to twenty years' imprisonment. The Thirteenth Court of Appeals initially affirmed the judgment as reformed and remanded the cause for resentencing. *Sorrells v. State*, No. 13-07-00633-CR (Tex. App.—Corpus Christi, delivered November 12, 2009). The State's petition for discretionary review was granted and the appellate court's decision was reversed and the matter remanded to the appellate court for further proceedings. *Sorrells v. State*, 343 S.W.3d 152 (Tex. Crim. App. 2011). On remand, the Thirteenth Court of Appeals affirmed the conviction. *Sorrells*

v. *State*, No. 13-07-00633-CR (Tex. App.–Corpus Christi, delivered August 25, 2011).

Applicant contends that his trial counsel rendered ineffective assistance because he failed to object to hearsay evidence without which sufficiency of the evidence could not have been established and the Applicant would have been entitled to an acquittal. The Applicant also contends that his appellate counsel rendered ineffective assistance because he failed to raise a meritorious claim that the trial court erred when it refused to issue a jury instruction on the lesser included offense of assault by threat.

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 trial and appellate counsel 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 and appellate counsel were 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: May 8, 2013  
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