



## IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NOS. WR-79,183-01 & -02

**EX PARTE KIMBERLY GORE BROWN, Applicant**

**ON APPLICATIONS FOR A WRIT OF HABEAS CORPUS  
CAUSE NOS. 19331 & 19333 IN THE 88TH DISTRICT COURT  
FROM HARDIN 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 these applications for a writ of habeas corpus. *Ex parte Young*, 418 S.W.2d 824, 826 (Tex. Crim. App. 1967). Applicant was convicted of two counts of intoxication manslaughter and sentenced to twenty years' imprisonment on each count. She did not appeal her convictions.

Applicant contends that trial counsel told her that she would become eligible for parole when her time served plus her good time equaled one-half of her sentences. In fact, she will become eligible after serving one-half of her sentences without consideration of good time. TEX. GOV'T

CODE § 508.145(d)(1); TEX. CODE CRIM. PROC. art. 42.12, §3g(a)(2).

Applicant has alleged facts that, if true, might entitle her to relief. *Strickland v. Washington*, 466 U.S. 668 (1984); *Ex parte Moussazadeh*, 361 S.W.3d 684 (Tex. Crim. App. 2012). 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. 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 she is not and 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 her 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 counsel's advice on parole eligibility was deficient and, if so, whether Applicant would have pleaded not guilty but for this advice. *Hill v. Lockhart*, 474 U.S. 52 (1985). 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.

These applications 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: April 10, 2013

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