



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-79,301-01

EX PARTE JUAN RAMON ESPARZA, Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 09-08-00073CRF IN THE 81ST DISTRICT COURT
FROM FRIO 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 entered an open plea of guilty to possession with intent to deliver a controlled substance, and was sentenced to twenty-five years' imprisonment. He did not appeal his conviction.

Applicant contends, *inter alia*¹, that his trial counsel rendered ineffective assistance because counsel assured Applicant up until the date of trial that he would receive probation, but then allowed

¹This Court has reviewed Applicant's other claims and found them to be without merit.

Applicant to enter an open plea of guilty without an awareness of the nature and consequences of his plea. Applicant also alleges that the arresting officer in his case was himself arrested and facing criminal charges at the time of Applicant's plea, but that counsel failed to afford Applicant the opportunity to challenge the officer's credibility or present his side of the story.

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 first supplement the habeas record with copies of the plea documents, including any admonishments, waivers and stipulations, and any evidence that was presented in support of the plea. The trial court shall make findings as to whether Applicant's plea was knowingly and voluntarily entered. The trial court shall make findings of fact and conclusions of law 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: April 17, 2013
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