



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-79,463-01

EX PARTE JOSE LUIS GONZALEZ, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 1249692 IN THE 351ST DISTRICT COURT
FROM HARRIS 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 theft and sentenced to 180 days years' imprisonment. He did not appeal his conviction.

Applicant contends, among other things, that counsel failed to advise him of the deportation consequences of his guilty plea. *Padilla v. Kentucky*, 559 U.S. 356 (2010). Counsel responded in a sworn affidavit, and the trial judge found his affidavit credible, signed findings of fact and conclusions of law on April 11, 2013, and recommended that we deny relief. On May 8, 2013, we adopted the trial judge's findings of fact and denied relief.

On May 13, we received a supplement from the Harris County District Clerk. It included a motion Applicant filed in the trial court to set aside the trial judge's findings and conclusions; an order the trial judge signed granting this motion; and new findings and conclusions, prepared by Applicant and signed by the trial judge on May 1, 2013, recommending that this Court grant relief on Applicant's ineffective assistance of counsel claim.

We now reconsider on our own motion our previous denial of this application and remand it for further findings and conclusions. 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 judge may order counsel to respond a second time to Applicant's claim. The trial judge may use any means set out in TEX. CODE CRIM. PROC. art. 11.07, § 3(d).

Applicant appears to be represented by counsel. If he is not and the trial judge 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 judge shall appoint an attorney to represent him at the hearing. TEX. CODE CRIM. PROC. art. 26.04.

The trial judge shall resolve the inconsistencies in his April 11 and May 1 findings and conclusions. He shall state whether he continues to believe that counsel's affidavit is credible and, if not, why he no longer believes this. He shall also state why his recommendation to deny relief has changed. He shall also make any other findings of fact that he deems relevant to his April 11 and May 1 findings and conclusions.

This application will be held in abeyance until the trial judge 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 judge'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: June 12, 2013
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