



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-79,465-01

EX PARTE AL LETROY SMITH, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 43,698-A IN THE 47TH DISTRICT COURT
FROM POTTER 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). In 2002, Applicant was convicted of assault on a public servant and sentenced to eight years' imprisonment.

Applicant contends that his appellate counsel rendered ineffective assistance because he did not perfect appeal. We remanded this application to the trial court for findings of fact and conclusions of law.

The trial court has determined that appellate counsel's performance was deficient and that counsel's deficient performance prejudiced Applicant.

We order that this application be filed and set to determine whether the State must plead laches for a court to consider it in determining whether to grant equitable relief. *Ex parte Perez*, 398 S.W.3d 206, 216 n.13 (Tex. Crim. App. 2013). The parties shall brief the issue. Oral argument is permitted.

Applicant does not appear to be represented by counsel. If he is not, the trial court shall determine whether he is indigent. If Applicant is indigent and desires to be represented by counsel, the trial court shall appoint an attorney to represent them. TEX. CODE CRIM. PROC. art 26.04. The trial court shall send to this Court, within 30 days of the date of this order, a supplemental transcript containing: a confirmation that Applicant is represented by counsel; the order appointing counsel; or a statement that Applicant is not indigent. All briefs shall be filed with this Court within 60 days of the date of this order.

Filed: November 27, 2013
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