



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-79,500-02

EX PARTE DELBERT PENDLEY, JR., Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 46,171-C IN THE 89TH DISTRICT COURT
FROM WICHITA 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 pleaded guilty and was convicted of two counts of failing to comply with registration requirements and sentenced to twelve years' imprisonment for each count.

Applicant contends that he was not required to register as a sex offender, therefore he is actually innocent. He also contends that counsel was ineffective for failing to investigate his duty to register as a sex offender.

Applicant has alleged facts that, if true, might entitle him to relief. *Ex parte Harbin*, 297

S.W.3d 283, 287 (Tex. Crim. App. 2009). 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). 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 what specific prior offense is being used as the basis for Applicant's requirement to register and what is the offense date, the conviction date, and the date of discharge for that offense. If an out of state offense is being used as the basis for Applicant's duty to register, the trial court shall determine whether that offense has been determined to be substantially similar to a Texas offense by the Department of Public Safety, and if so, the date of that determination. The trial court shall determine whether Applicant was in a Texas correctional facility on or after September 1, 1997 for an offense other than failing to register as a sex offender. The trial court shall also 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: October 9, 2013
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