



## IN THE COURT OF CRIMINAL APPEALS OF TEXAS

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NO. WR-79,808-01

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**EX PARTE DUSTIN PAUL MCFALL, Applicant**

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**ON APPLICATION FOR A WRIT OF HABEAS CORPUS  
CAUSE NO. CR-10-0538-A IN THE 22ND DISTRICT COURT  
FROM HAYS COUNTY**

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*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 to two counts of sexual assault of a child in exchange for deferred adjudication community supervision. Applicant's guilt was later adjudicated, and he was sentenced to twenty years for each count, cumulated with each other and with another sentence for failure to comply with sex offender registration requirements.

Applicant contends, *inter alia*,<sup>1</sup> that his trial counsel rendered ineffective assistance because counsel failed to object when the trial court stated an opinion that Applicant should go to prison for life, failed to advise Applicant that he would not be subject to an automatic life sentence if he were convicted at trial, failed to object to the cumulation order after adjudication, and failed to file notice of appeal after adjudication, despite Applicant's expression of his desire to appeal.

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 claims 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 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 specific findings as to whether Applicant expressed a desire to appeal after adjudication, whether notice of appeal was filed on his behalf, and whether appellate counsel was appointed to represent him. The trial court shall also make any other findings of fact and conclusions of law that it deems relevant and appropriate to the

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<sup>1</sup>This Court has considered Applicant's other grounds for review, and finds them to be without merit.

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: September 11, 2013  
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