



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-79,846-01

EX PARTE JAVIER MEJIA, Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 959190-A IN THE 179TH 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 possession of a controlled substance and sentenced to ninety-five days' imprisonment. He did not appeal his conviction.

Applicant contends, among other things, that adjudication-of-guilt counsel rendered his plea of true involuntary. The trial court found that when Applicant pleaded true to the State's motion to adjudicate, he believed that he had no choice but to do so based on counsel's advice, even though the allegations in the State's motion to adjudicate were not true; he did not know that the agency that

conducted his urinalysis was not conducting such tests in a reliable way; he would not have pleaded true had he known about the reliability of such tests; and he believed his only choice was to “take the plea.” The trial court recommended that we grant relief.

We believe that the trial court should make further findings and conclusions and develop the record.

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 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 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 him at the hearing. TEX. CODE CRIM. PROC. art. 26.04.

The trial court shall make further findings and conclusions as to whether the State was prejudiced by Applicant’s delay, *Ex parte Perez*, No. AP-76,800, 2013 Tex. Crim. App. LEXIS 739 (Tex. Crim. App. May 8, 2013); whether the affidavit adjudication-of-guilt counsel filed is credible; and what evidence, if any, shows that the testing procedures at the Harris County Probation Department were unreliable in 2004, when Applicant was adjudicated guilty. The trial court shall also order the District Clerk to forward a copy of the State’s motion to adjudicate. The trial court shall also make any other findings and conclusions 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: July 24, 2013
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