



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-79,882-01

EX PARTE MARCOS DESHAWN ADAMS, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 10853JD-HC-1 IN THE 1ST DISTRICT COURT
FROM JASPER 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 impersonating a public servant and sentenced to thirty-five years' imprisonment. The Ninth Court of Appeals affirmed his conviction. *Adams v. State*, No. 09-10-00447-CR (Tex. App.—Beaumont 2011, pet. ref'd).

Applicant contends, among other things, that trial counsel, knowing that Applicant had filed a formal complaint against the trial judge, failed to timely file a motion to recuse the trial judge and requested that the trial judge sentence Applicant. The trial court found that there were no

controverted, previously unresolved facts material to the legality of Applicant's confinement and recommended that we deny relief. We disagree. The record is not sufficient to resolve Applicant's ineffective assistance of counsel claims.¹

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 ineffective assistance of counsel claim. 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 trial counsel's conduct was deficient and, if so, Applicant was prejudiced. 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

¹In its response, the State argues that the grounds in this application that were not raised on direct appeal could and should have been raised there. We have repeatedly held that ineffective assistance of counsel claims should be raised in an Article 11.07 application because the record on direct appeal is often inadequate. *Thompson v. State*, 9 S.W.3d 808, 814 (Tex. Crim. App. 1999). In Applicant's case, we find no reason to disagree with this principle.

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 23, 2013

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