



## IN THE COURT OF CRIMINAL APPEALS OF TEXAS

---

---

NO. WR-79,946-01

---

---

**EX PARTE LOUIS DUANE JENKINS, Applicant**

---

---

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS  
CAUSE NO. W7874-1 IN THE 355TH DISTRICT COURT  
FROM HOOD 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 aggravated sexual assault of a child and sentenced to twenty years' imprisonment. The Second Court of Appeals affirmed the conviction in an unpublished opinion. *Jenkins v. State*, No. 02-00-00433-CR (Tex.App.—Fort Worth Aug. 9, 2001).

Applicant contends that he is actually innocent of the offense based on the recantation of the complainant. We believe that in recantation cases such as this one, before we make the important decision of whether Applicant is entitled to relief, the record should be more fully developed. The trial court shall therefore conduct a live evidentiary hearing on the matter at which the complainant

shall be called to testify. Notice of the hearing and an opportunity to testify shall be given to those persons who participated in the trial or the investigation, including: Debra K. Jimenez, Carol Diane Ballestro Hessbrook, Renee Leslie Thompson, Dr. Ann Sims, Tammy Jenkins, Michelle Davis, Dr. Gelzer, and Richard Hattox. The complainant's recantation relates to statements she made on a videotape when she was a child. The trial court shall make findings of fact as to whether the recantation affects her initial outcry. The trial court shall make further findings of fact regarding whether there was a child-custody dispute, whether Debra Jimenez coached the child to lie, and if so, when such coaching occurred. The trial court shall make further findings of fact regarding whether the child complainant made false allegations on the videotape and, if so, whether the State relied on that false evidence at trial. The trial court shall make further findings of fact regarding the circumstances surrounding the complainant's recantation, including the delay between the trial and the recantation. The trial court shall specifically weigh the evidence of Applicant's guilt, including all of the testimony at trial and the videotape of the child, against the new evidence of innocence. *See Ex parte Tuley*, 109 S.W.3d 388, 393 (Tex. Crim. App. 2002). The trial court shall enter findings of fact as to the credibility of the witnesses.

It appears that Applicant is represented by habeas counsel. If habeas counsel does not continue to represent Applicant, however, the trial court, within 30 days of the date of this order, 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 evidentiary hearing. TEX. CODE CRIM. PROC. art. 26.04.

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 the

transcription of the court reporter's notes from the live evidentiary hearing and a copy of the exhibits admitted, along with the trial court's supplemental findings of fact and conclusions of law and a copy of the trial record, including the clerk's record and a transcription of the reporter's record of the trial, 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.

Delivered: October 9, 2013

Do not publish