



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-80-035-01

EX PARTE STEVEN MCQUEEN WILLIAMS, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. W08-41179-X(A) IN THE CRIMINAL DISTRICT COURT 6
FROM DALLAS 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 entered an open plea of guilty to murder, and was sentenced to thirty years' imprisonment.

Applicant contends, *inter alia*, that his plea was not knowingly and voluntarily entered, that his waiver of appeal should not have been effective, and that his trial counsel rendered ineffective assistance because, *inter alia*, counsel failed to get a plea agreement in writing, failed to present evidence during the punishment phase of an agreement that had been negotiated in exchange for Applicant's truthful testimony against his co-defendants, failed to advise the sentencing court that

Applicant was eligible for deferred adjudication community supervision or file a motion for community supervision, and failed to present character witnesses at the punishment stage.

Applicant's trial counsel and co-counsel both submitted affidavits responding, at least in part, to Applicant's allegations. However, the record does not contain sufficient information regarding what exactly transpired during Applicant's plea and sentencing to address all of Applicant's claims.

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).

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 first supplement the habeas record with transcripts of the plea and sentencing hearings. The trial court shall make findings of fact and conclusions of law as to whether Applicant had an agreement by which he would testify truthfully at his co-defendants' trials, would enter an open plea of guilty to Judge John Nelms, and would receive a sentence of less than twenty years' imprisonment. The trial court shall make findings as to whether Applicant testified truthfully at his co-defendants' trials. The trial court shall make findings as to whether Applicant's waiver of appeal was entered when he believed that he would be sentenced by Judge John Nelms. The trial court shall make findings as to why Judge Nelms accepted Applicant's plea of guilty, but Judge Howard presided over Applicant's sentencing. The trial court shall make findings as to whether

Applicant was given the opportunity to withdraw his plea or appeal from his sentencing after he learned that Judge Nelms would not be sentencing him for the charge. The trial court shall make findings 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: September 11, 2013
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