



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NOS. WR-80,453-01 & -02

EX PARTE WILLIAM GREGORY DALE, Applicant

ON APPLICATIONS FOR WRITS OF HABEAS CORPUS
CAUSE NOS. 09-194-CR-A & 09-202-CR-A
IN THE 77TH DISTRICT COURT FROM FREESTONE 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 these applications for writs of habeas corpus. *Ex parte Young*, 418 S.W.2d 824, 826 (Tex. Crim. App. 1967). In Cause No. 09-194-CR-A, Applicant was convicted of aggravated sexual assault of a child and was sentenced to fifteen years' imprisonment. In Cause No. 09-202-CR-A, Applicant was convicted of indecency with a child and was sentenced to six years' imprisonment. Applicant's convictions were affirmed in *Dale v. State*, 10-11-00380-CR and 10-11-00381-CR (Tex. App.—Waco April 18, 2012).

Applicant contends, *inter alia*, that his trial counsel rendered ineffective assistance of counsel. Applicant has alleged facts that, if true, might entitle 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 claim 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 the following findings of fact and conclusions of law: (1) whether trial counsel was deficient for failing to object to the alleged incorrect statements in the CPS report; (2) whether trial counsel was deficient for not impeaching CPS Investigator Michelle Miller's testimony and report; (3) whether trial counsel was deficient for failing to call Rance Moore as a witness for the defense; (4) whether trial counsel was deficient for failing to seek a continuance to obtain the testimony of Applicant's father who was hospitalized at the time of trial; and (5) whether trial counsel was deficient for failing to object to the prosecutor's closing argument that implied that Applicant assaulted his niece. 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 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.

These applications 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: November 27, 2013
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