



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-80,853-01

EX PARTE MARTIN MENDOZA REYNOZA, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. CR 08A-010 IN THE 222ND DISTRICT COURT
FROM DEAF SMITH 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 writ of habeas corpus. *Ex parte Young*, 418 S.W.2d 824, 826 (Tex. Crim. App. 1967). Applicant was convicted of murder and sentenced to ninety-nine years' imprisonment. The Seventh Court of Appeals affirmed his conviction. *Reynoza v. State*, 07-08-00452-CR (Tex. App.—Amarillo delivered Sep. 3, 2009).

Applicant contends that he was denied the right to file a petition for discretionary review (PDR) to this Court because counsel failed to timely advise him of the appellate court's opinion and his right to file a *pro se* PDR. Appellate counsel submitted an affidavit to the habeas court stating

that he mailed a timely letter to Applicant dated September 8, 2009 advising him of the appellate opinion, his right to file a *pro se* PDR, and the applicable deadlines. However, Applicant has also provided a response to his inquiry to the mail room stating that Applicant received no incoming mail from April 1, 2009 through November 18, 2009. It appears that counsel's letter may not have reached Applicant and he might be entitled to an out-of-time PDR based on a break down in the system.

Applicant has alleged facts which, if true, might entitle him to relief. *Ex parte Riley*, 193 S.W.3d 900 (Tex. Crim. App. 2006). 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), in that it shall order the Texas Department of Criminal Justice's Office of the General Counsel to file an affidavit and obtain mail room logs showing whether Applicant received any mail from the time period of September 1, 2009 through November 1, 2009 and if so, whether any of that incoming mail was from appellate counsel.

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 as to whether Applicant received a letter from appellate counsel within the available time frame to file a *pro se* PDR. 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. If any continuances are granted, a copy of the order granting the continuance shall be sent to this Court. 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 returned to this Court within 120 days of the date of this order. Any extensions of time shall be obtained from this Court.

Filed: February 26, 2014
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