



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-82,240-05

EX PARTE DEAN EDWARD CALHOUN, Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. CR-09-0771-A IN THE 22ND DISTRICT COURT
FROM HAYS 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 assault with family violence and placed on probation. The probation was later revoked on Applicant's plea of true, and the trial court imposed a two-year sentence. There was no direct appeal. The sentence has discharged, but Applicant complains of its use in a habitual enhancement in a new prosecution, so he pleads sufficient collateral consequences to have the habeas application reviewed. *Ex parte Harrington*, 310 S.W.3d 452, 457 (Tex. Crim. App. 2010).

It appears that, at the time of this Hays County prosecution, Applicant was also being prosecuted for an assault with family violence offense in Comal County. He was placed on probation in the Comal County case (cause no. CR-2010-216) soon after he was placed on probation in this Hays County case (cause no. CR-99-0771). Applicant complains that his plea of true to the Hays County revocation allegations was not voluntary because his attorney told him "that both CR-2010-216 [the Comal County case] and CR-09-0771 [the Hays County case] would 'both' be satisfied." This was not true, however, because, although the 2-year sentence for this Hays County conviction has discharged, there is a pending motion to revoke Applicant's probation in the Comal County case.

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 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 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.

Applicant raises other claims in his habeas application, including actual innocence and prosecutorial misconduct. He fails to show entitlement to habeas relief on these claims.

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 must be requested by the trial court and shall be obtained from this Court.

Filed: November 9, 2016
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