IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-89,134-01

EX PARTE DAVID CHAVIRA, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 20120D03609-41-1 IN THE 41st DISTRICT COURT
FROM EL PASO COUNTY**

***Per curiam*.**

O R D E R

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 possession of a controlled substance and sentenced to ninety years' imprisonment. The Eighth Court of Appeals affirmed his conviction. *Chavira v. State*, No. 08-15-00128-CR (Tex. App.—El Paso May 16, 2017) (not designated for publication).

Applicant contends, among other things, that his trial counsel rendered ineffective assistance because he failed to adequately communicate with Applicant, failed to interview witnesses who would have testified about the validity of the stop, search and seizure, failed to be prepared for trial,

failed to file any pre-trial motions, waived a twelve person jury without stipulation, and failed to apply the applicable law and the standard of admissibility for extraneous offense evidence. In addition, Applicant alleges that trial counsel, who was also appellate counsel, was ineffective on direct appeal for not raising issues regarding counsel's ineffective assistance at trial, and for failing to adequately communicate with Applicant.

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). In the appropriate case, the trial court may rely on its personal recollection. *Id*.

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.

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: January 30, 2019
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