IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-89,452-01

EX PARTE GERARDO CRUZ, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 241-1534-12 IN THE 241ST DISTRICT COURT
FROM SMITH 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 pleaded guilty to Fraud Possession of a Controlled Substance/ Prescription Schedule III/IV in exchange for deferred adjudication community supervision. His community supervision was later revoked, and he was sentenced to two years' imprisonment. He did not appeal his conviction.

Applicant contends that his trial counsel rendered ineffective assistance because he failed to advise Applicant of the immigration and deportation consequences of his plea, as required by *Padilla v. Kentucky*, 559 U.S. 356, 366-67 (2010).

On December 13, 2018, the trial court conducted a live habeas hearing at which the court heard testimony and argument. The habeas record does not contain a transcription of that hearing. 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 supplement the habeas record with a transcript of the habeas hearing conducted on December 13, 2018. In addition, the trial court shall supplement the habeas record with transcripts of Applicant's original plea hearing and adjudication hearing. 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. A supplemental transcript containing all affidavits and interrogatories or the transcription of the court reporter's notes from any hearing or deposition, along with any supplemental findings of fact and conclusions of law, shall be forwarded to this Court within 60 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: February 13, 2019

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