IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-90,522-01

EX PARTE ULESSIA PROCTER, Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS CAUSE NO. 1372857-A IN THE 208TH DISTRICT COURT FROM HARRIS 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 murder and sentenced to thirty-five years' imprisonment. The Fourteenth Court of Appeals affirmed her conviction. *Procter v.* State, No. 14-15-00256-CR (Tex. App.—Houston [14th]) Aug. 11, 2016 (not designated for publication).

Applicant contends that her trial counsel rendered ineffective assistance by failing to investigate and advance a defense of battered woman's syndrome and failing to investigate the alleged enhancements and inform her regarding how those enhancements would affect her sentence.

Applicant has alleged facts that, if true, might entitle her 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 has signed an order designating issues and ordering trial counsel to respond. There is no affidavit from counsel in the habeas record forwarded to this Court. The trial court shall obtain an affidavit from trial counsel responding to Applicant's claims 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.

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 6, 2019
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