IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NOS. WR-45,584-06 & WR-45,584-07

EX PARTE PHILLIP BARNES, Applicant

ON APPLICATIONS FOR WRITS OF HABEAS CORPUS
CAUSE NOS. 14-12-28379-D-1 & 15-02-28489-D-1
IN THE 377TH DISTRICT COURT FROM VICTORIA COUNTY

***Per curiam*.**

O R D E R

Applicant pleaded guilty and was convicted of prohibited substance in a correctional facility and delivery of a controlled substance and sentenced to four years' imprisonment for each cause. Applicant filed these applications for writs of habeas corpus in the county of conviction, and the district clerk forwarded it to this Court. *See* TEX. CODE CRIM. PROC. art. 11.07.

Applicant contends that plea was involuntary because counsel prevented him from accepting an extension on his probation, resulting in the revocation of his supervision. Applicant has alleged facts that, if true, might entitle him to relief. *Brady v. United States*, 397 U.S. 742 (1970). Accordingly, the record should be developed. The trial court is the appropriate forum for findings of fact. TEX. CODE CRIM. PROC. art. 11.07, § 3(d). The trial court shall order trial counsel to

respond to Applicant's claim. In developing the record, the trial court may use any means set out in Article 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 wants to be represented by counsel, the trial court shall appoint counsel to represent him at the hearing. *See* TEX. CODE CRIM. PROC. art. 26.04. If counsel is appointed or retained, the trial court shall immediately notify this Court of counsel's name.

The trial court shall make findings of fact and conclusions of law as to whether Applicant's plea was involuntary or counsel was ineffective. The trial court may make any other findings and conclusions that it deems appropriate in response to Applicant's claims.

The trial court shall make findings of fact and conclusions of law within ninety days from the date of this order. The district clerk shall then immediately forward to this Court the trial court's findings and conclusions and the record developed on remand, including, among other things, affidavits, motions, objections, proposed findings and conclusions, orders, and transcripts from hearings and depositions. *See* TEX. R. APP. P. 73.4(b)(4). Any extensions of time must be requested by the trial court and obtained from this Court.

Filed: January 13, 2021
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