IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-92,153-01

EX PARTE BENJAMIN DON EDDINGTON, Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS CAUSE NO. 23,747-2018A IN THE 402ND DISTRICT COURT FROM WOOD COUNTY

***Per curiam*.**

O R D E R

Applicant was convicted of possession of a controlled substance in a drug free zone and sentenced to ten years' imprisonment. He filed this application for a writ 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, among other things, that counsel did not adequately advise him of the consequences of a drug free zone finding and that he was denied his right to an appeal because counsel failed to timely file a notice of appeal. Applicant has alleged facts that, if true, might entitle him to relief. *Ex parte Axel*, 757 S.W.2d 369 (Tex. Crim. App. 1988); *Jones v. State*, 98 S.W.3d 700 (Tex. Crim. App. 2003). 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 was denied his right to an appeal because trial counsel failed to timely file a notice of appeal. The trial counsel shall also make findings of act and conclusions of law determining whether Applicant's initial guilty plea was involuntary due to counsel's alleged failure to explain the significance and applicability of a drug free zone finding in the case. 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.

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