IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-91,638-01

EX PARTE RICHARD WAYNE BARBER, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 91-036A IN THE 207TH DISTRICT COURT
FROM CALDWELL COUNTY**

***Per curiam*.**

O R D E R

Applicant was convicted of burglary of a habitation and sentenced to thirty years' imprisonment. Applicant 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 says that he is eligible for and that the Parole Board must release him to mandatory supervision (MS) on this sentence, but he says the Parole Board is not doing so because he is also serving a concurrent sentence for which he is not being released to discretionary mandatory supervision (DMS). The Parole Board provided a response. This Court has since issued a decision in *Ex parte Rivers*, No. WR-44,786-06, 2022 WL 1565617 (Tex. Crim. App. del. May 18, 2022), which addresses the issue.

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 the Board of Pardons and Paroles's Office of the General Counsel to obtain a response from a person with knowledge of relevant facts addressing whether the Board is applying this Court's holding in *Rivers* to Applicant's supervised release. The trial court shall make findings of fact and conclusions of law regarding Applicant's claim, and the trial court may make any other findings and conclusions that it deems appropriate.

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: September 7th, 2022
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