IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-94,051-01

EX PARTE ROBERTO CLEMENTE PEREZ, Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS CAUSE NO. 1062590-A IN THE 185TH DISTRICT COURT FROM HARRIS COUNTY

***Per curiam*. NEWELL, J. concurs.**

O R D E R

Applicant was convicted of possession of a controlled substance and sentenced to twenty-five 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.

This application was file-stamped in Harris County on October 9, 2008. An order designating issues was signed by the trial judge on October 17, 2008. This application was not received by this Court until September 2, 2022. There is no indication in the record of any action by the trial court after the order designating issues was signed. Nor is there any indication as to why this application was pending in Harris County for so long without any action by the clerk or the trial court.

Applicant contends that his trial counsel acted under a conflict of interest because each of the three co-defendants in his situation were all represented by different members of a three person law firm, Flood and Flood. He alleges that he was unaware of the situation and did not waive any conflict. Applicant has alleged facts that, if true, might entitle him to relief. *Hill v. Lockhart*, 474 U.S. 52 (1985); *Ex parte Argent*, 393 S.W.3d 781 (Tex. Crim. App. 2013). 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).

As a preliminary matter, the trial court shall make findings of fact as to why no action was taken by the trial court or the clerk between the entry of the order designating issues and the forwarding of the application to this Court. The trial court shall obtain a response from Applicant as to whether Applicant still wants to pursue this application, and shall include that response in the supplemental record. If the trial court is unable to obtain such a response from Applicant, the trial court shall detail the efforts that were made to obtain a response from Applicant. The trial court shall then return the application to this Court..

If Applicant indicates that he does want to pursue this application, the trial court shall order trial counsel to respond to Applicant's claims. 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.

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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