



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-84,021-04

EX PARTE LYDELL GRANT, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 1288802-C IN THE 351ST DISTRICT COURT
FROM HARRIS COUNTY**

Per curiam. NEWELL, J., not participating.

ORDER

Applicant was convicted of murder and sentenced to life imprisonment. The First Court of Appeals affirmed his conviction. *Grant v. State*, No. 01-02-01173-CR (Tex. App.—Houston [1st Dist.] Apr. 1, 2014) (not designated for publication). 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 contends that he is actually innocent, he was denied due process because the State presented false testimony, and by a preponderance of the evidence, he would not have been convicted based on newly available scientific evidence. *See* TEX. CODE CRIM. PROC. art. 11.073. The trial court adopted Applicant's and the State's proposed findings of fact and conclusions of law

recommending that we grant Applicant a new trial because he is actually innocent. *See Ex parte Elizondo*, 947 S.W.2d 202 (Tex. Crim. App. 1996). On April 1, 2020, we directed the trial court to order the Harris County District Clerk to forward a copy of Jermarico Carter's videotaped interview with the Houston Police Department. We believe that the record should be further 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 District Clerk to forward photographs, if available, of Jermarico Carter taken shortly before or after 2010, the year of the offense. The trial court shall also order the witnesses, if available, who identified Applicant in a photospread and at trial to respond in affidavits to Applicant's actual innocence claim. In developing the record, the trial court may use any means set out in Article 11.07, § 3(d).

Applicant appears to be represented by counsel. If he is not and 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 new counsel is appointed or retained, the trial court shall immediately notify this Court of counsel's name.

After the record is developed, the trial court shall further make findings of fact and conclusions of law as to whether Applicant has established that he is actually innocent. The trial court shall also make findings and conclusions as to whether Applicant is entitled to a new trial under Article 11.073 of the Code of Criminal Procedure and his due process rights were violated because the State presented false testimony. 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: July 1, 2020
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