



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-91,215-01

EX PARTE JACOB DOUGLAS ELLISON, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. W13588-1 IN THE 355TH DISTRICT COURT
FROM HOOD COUNTY**

Per curiam.

ORDER

Applicant entered an open plea of guilty to aggravated sexual assault of a child and was sentenced by a jury to ninety-nine years' imprisonment. The Second Court of Appeals affirmed his conviction. *Ellison v. State*, No. 02-18-00056-CR (Tex. App. — Fort Worth August 22, 2019) (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 trial counsel was ineffective because trial counsel advised him to plead guilty to the jury, failed to file a motion to suppress Applicant's statement to a D.A.'s investigator on the basis that Applicant did not receive *Miranda* warnings before making the

statement, continuing to represent Applicant after filing a motion to withdraw from the representation, thereby creating a conflict of interest, failing to object to improper statements made by the prosecutor during closing arguments, and failing to communicate plea offers made by the State to Applicant.

Applicant has alleged facts that, if true, might entitle him to relief. *Strickland v. Washington*, 466 U.S. 668 (1984). 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 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. 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 trial counsel's performance was deficient and Applicant was prejudiced. 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: June 17, 2020
Do not publish