



## IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NOS. WR-91,222-01 & 91,222-02

**EX PARTE RIGOBERTO OLIVAREZ SILVA, JR., Applicant**

ON APPLICATIONS FOR WRITS OF HABEAS CORPUS  
CAUSE NOS. CR-2639-16-G(1) & CR-3707-18-G(1) IN THE 370TH DISTRICT COURT  
FROM HIDALGO COUNTY

*Per curiam.*

### ORDER

Applicant pleaded guilty to intoxication assault, evading arrest, unlawful possession of a firearm by a felon, and two counts of driving while intoxicated. He was sentenced to seven years' imprisonment on each count. The Thirteenth Court of Appeals dismissed his appeals. *Silva v. State*, Nos. 13-19-00373-CR & 13-19-00376-CR (Tex. App.—Corpus Christi Oct. 31, 2019) (not designated for publication). Applicant filed these applications for writs of habeas corpus in the county of conviction, and the district clerk forwarded them to this Court. *See* TEX. CODE CRIM. PROC. art. 11.07.

Applicant contends, among other things, that counsel told him that he would be able to file appeals even though he pleaded guilty. According to the record, Applicant pleaded guilty without

a plea bargain and recommendation from the State, proceeded to sentencing before the trial court, was exposed to the full range of punishment, and waived his right to appeal before he was sentenced. 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); *Ex parte Delaney*, 207 S.W.3d 794 (Tex. Crim. App. 2006). 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 the above 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 further findings of fact and conclusions of law as to whether Applicant's waivers of appeal were knowing and voluntary. *See Delaney*, 207 S.W.3d at 798–99. The trial court shall then determine whether trial counsel's advice on the waivers of appeals in Applicant's cases was deficient and but for that alleged deficient advice Applicant would not have pleaded guilty but instead insisted on a trial. 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

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