



# IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NOS. WR-91,030-01 & 91,030-02

**EX PARTE MICHAEL JOHN ZALOBNY, Applicant**

**ON APPLICATIONS FOR WRITS OF HABEAS CORPUS  
CAUSE NOS. 14511A & 14512A IN THE 21ST DISTRICT COURT  
FROM BURLESON COUNTY**

*Per curiam.*

## ORDER

Applicant was convicted of unauthorized use of a vehicle and possession of a controlled substance and sentenced to two years' imprisonment in each case. The Tenth Court of Appeals affirmed his convictions. *Zalobny v. State*, Nos. 10-18-00257-CR & 10-18-00258-CR (Tex. App.—Waco July 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.

In a single ground, Applicant contends that he hired counsel, Patrick McCann, to file petitions for discretionary review (PDRs) and that McCann failed to do so. The trial court made findings of fact and conclusions of law and recommended that we grant Applicant out-of-time PDRs.

We believe the trial court's findings and conclusions are not adequate to resolve Applicant's claim.

The trial court is the appropriate forum for findings of fact. TEX. CODE CRIM. PROC. art. 11.07, § 3(d). The trial court may order McCann to file a second response to Applicant's 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 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 determine whether Applicant retained McCann before October 29, 2019, to file PDRs or, alternatively, an attorney-client relationship between Applicant and McCann existed before October 29, 2019, requiring McCann to file PDRs on Applicant's behalf. In making these findings, the trial court shall determine whether Applicant's declaration and McCann's sworn affidavit are credible. The trial court may make any other findings and conclusions that it deems appropriate in response to Applicant's claim.

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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