

By: Hodge

H.B. No. 1713

A BILL TO BE ENTITLED

AN ACT

relating to an application for a writ of habeas corpus to seek relief related to community supervision.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 11, Code of Criminal Procedure, is amended by adding Article 11.072 to read as follows:

Art. 11.072. PROCEDURE IN COMMUNITY SUPERVISION CASE

Sec. 1. This article establishes the procedures for an application for a writ of habeas corpus in a felony or misdemeanor case in which the applicant seeks relief from an order or a judgment of conviction ordering community supervision.

Sec. 2. (a) An application for a writ of habeas corpus under this article must be filed with the clerk of the court in which community supervision was imposed.

(b) At the time the application is filed, the applicant must be, or have been, on community supervision, and the application must challenge the legal validity of:

(1) the conviction for which or order in which community supervision was imposed; or

(2) the conditions of community supervision.

Sec. 3. (a) An application may not be filed under this article if the applicant could obtain the requested relief by means of an appeal under Article 44.02 and Rule 25.2, Texas Rules of Appellate Procedure.

1       (b) An applicant seeking to challenge a particular  
2 condition of community supervision but not the legality of the  
3 conviction for which or the order in which community supervision  
4 was imposed must first attempt to gain relief by filing a motion to  
5 amend the conditions of community supervision.

6       (c) An applicant may challenge a condition of community  
7 supervision under this article only on constitutional grounds.

8       Sec. 4. (a) When an application is filed under this article,  
9 a writ of habeas corpus issues by operation of law.

10       (b) At the time the application is filed, the clerk of the  
11 court shall assign the case a file number ancillary to that of the  
12 judgment of conviction or order being challenged.

13       Sec. 5. (a) Immediately on filing an application, the  
14 applicant shall serve a copy of the application on the attorney  
15 representing the state, by either certified mail, return receipt  
16 requested, or personal service.

17       (b) The state may file an answer within the period  
18 established by Subsection (c), but is not required to file an  
19 answer.

20       (c) The state may not file an answer after the 30th day after  
21 the date of service, except that for good cause the convicting court  
22 may grant the state one 30-day extension.

23       (d) Any answer, motion, or other document filed by the state  
24 must be served on the applicant by certified mail, return receipt  
25 requested, or by personal service.

26       (e) Matters alleged in the application not admitted by the  
27 state are considered to have been denied.

1       Sec. 6. (a) Not later than the 60th day after the day on  
2 which the state's answer is filed, the trial court shall enter a  
3 written order granting or denying the relief sought in the  
4 application.

5       (b) In making its determination, the court may order  
6 affidavits, depositions, interrogatories, or a hearing, and may  
7 rely on the court's personal recollection.

8       (c) If a hearing is ordered, the hearing may not be held  
9 before the eighth day after the day on which the applicant and the  
10 state are provided notice of the hearing.

11       (d) The court may appoint an attorney or magistrate to hold  
12 a hearing ordered under this section and make findings of fact. An  
13 attorney appointed under this subsection is entitled to  
14 compensation as provided by Article 26.05.

15       Sec. 7. (a) If the court determines from the face of an  
16 application or documents attached to the application that the  
17 applicant is manifestly entitled to no relief, the court shall  
18 enter a written order denying the application as frivolous. In any  
19 other case, the court shall enter a written order including  
20 findings of fact and conclusions of law. The court may require the  
21 prevailing party to submit a proposed order.

22       (b) At the time an order is entered under this section, the  
23 clerk of the court shall immediately, by certified mail, return  
24 receipt requested, send a copy of the order to the applicant and to  
25 the state.

26       Sec. 8. If the application is denied in whole or part, the  
27 applicant may appeal under Article 44.02 and Rule 31, Texas Rules of

1 Appellate Procedure. If the application is granted in whole or  
2 part, the state may appeal under Article 44.01 and Rule 31, Texas  
3 Rules of Appellate Procedure.

4 Sec. 9. (a) If a subsequent application for a writ of habeas  
5 corpus is filed after final disposition of an initial application  
6 under this article, a court may not consider the merits of or grant  
7 relief based on the subsequent application unless the application  
8 contains sufficient specific facts establishing that the current  
9 claims and issues have not been and could not have been presented  
10 previously in an original application or in a previously considered  
11 application filed under this article because the factual or legal  
12 basis for the claim was unavailable on the date the applicant filed  
13 the previous application.

14 (b) For purposes of Subsection (a), a legal basis of a claim  
15 is unavailable on or before a date described by that subsection if  
16 the legal basis was not recognized by and could not have been  
17 reasonably formulated from a final decision of the United States  
18 Supreme Court, a court of appeals of the United States, or a court  
19 of appellate jurisdiction of this state on or before that date.

20 (c) For purposes of Subsection (a), a factual basis of a  
21 claim is unavailable on or before a date described by that  
22 subsection if the factual basis was not ascertainable through the  
23 exercise of reasonable diligence on or before that date.

24 SECTION 2. Article 44.01, Code of Criminal Procedure, is  
25 amended by adding Subsection (k) to read as follows:

26 (k) The state is entitled to appeal an order granting relief  
27 to an applicant for a writ of habeas corpus under Article 11.072.

1           SECTION 3.   This Act takes effect immediately if it receives  
2 a vote of two-thirds of all the members elected to each house, as  
3 provided by Section 39, Article III, Texas Constitution.  If this  
4 Act does not receive the vote necessary for immediate effect, this  
5 Act takes effect September 1, 2003.