

By: Gallego

H.B. No. 3397

A BILL TO BE ENTITLED

AN ACT

relating to an application for a writ of habeas corpus in certain felony cases.

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

SECTION 1. Article 11.07, Code of Criminal Procedure, is amended to read as follows:

Art. 11.07. PROCEDURE AFTER CONVICTION WITHOUT DEATH PENALTY

Sec. 1. This article establishes the procedures for an application for writ of habeas corpus in which the applicant seeks relief from a felony judgment imposing a penalty other than death. For purposes of this article, only a written application that alleges facts that, if true, would entitle the applicant to relief is considered to be an application for a writ of habeas corpus.

Sec. 2. After indictment found in any felony case, other than a case in which the death penalty is imposed, and before conviction, the writ must be made returnable in the county where the offense has been committed.

Sec. 3. (a) After final conviction in any felony case, the writ must be made returnable to the Court of Criminal Appeals of Texas at Austin, Texas.

(b) (1) An application for writ of habeas corpus filed after final conviction in a felony case, other than a case in which the death penalty is imposed, must be filed with the clerk of the court

1 in which the conviction being challenged was obtained, and the
2 clerk shall assign the application to that court. The filing of a
3 writ of habeas corpus under this article is a ministerial duty and
4 is not discretionary.

5 (2) When the application is received by the ~~[that]~~
6 court described by Subdivision (1), a writ of habeas corpus,
7 returnable to the Court of Criminal Appeals, shall issue by
8 operation of law. The clerk of the ~~[that]~~ court shall make
9 appropriate notation thereof, assign to the case a file number
10 (ancillary to that of the conviction being challenged), and forward
11 a copy of the application by certified mail, return receipt
12 requested, or by personal service to the attorney representing the
13 state in that court, who shall answer the application not later than
14 the 15th day after the date the copy of the application is received.
15 Matters alleged in the application not admitted by the state are
16 considered ~~[deemed]~~ denied.

17 (3) The applicant may respond within a reasonable
18 period to the answer of the attorney representing the state and to
19 any affidavits provided by the attorney representing the state.

20 (c)(1) Within 20 days of the expiration of the time in which
21 the state is allowed to answer, ~~[it shall be the duty of]~~ the
22 convicting court shall ~~[to]~~ decide whether there are controverted,
23 previously unresolved facts material to the legality of the
24 applicant's confinement. ~~[Confinement means confinement for any~~
25 ~~offense or any collateral consequence resulting from the conviction~~
26 ~~that is the basis of the instant habeas corpus.]~~

27 (2) To determine whether facts as described by

1 Subdivision (1) exist, the court may set the matter for a
2 preliminary hearing. The preliminary hearing is limited to a
3 consideration of the issue of whether there are controverted,
4 previously unresolved facts material to the legality of the
5 applicant's confinement.

6 (3) If the [~~convicting~~] court determines [~~decides~~]
7 that facts as described by Subdivision (1) do not exist [~~there are~~
8 ~~no such issues~~], the clerk shall immediately transmit to the Court
9 of Criminal Appeals a copy of the application, all exhibits, a
10 transcription of the hearing, any answers filed under Subsection
11 (b)(2) or (3), and a certificate reciting the date on [~~upon~~] which
12 that finding was made. [Failure of the court to act within the
13 allowed 20 days shall constitute such a finding.]

14 (d) If the convicting court decides that [~~there are~~
15 ~~controverted, previously unresolved~~] facts as described by
16 Subsection (c)(1) do exist [~~which are material to the legality of~~
17 ~~the applicant's confinement~~], the court [~~it~~] shall enter an order
18 within 20 days of the expiration of the time allowed for the state
19 to reply, designating the issues of fact to be resolved. To resolve
20 those issues, the court may order affidavits, depositions,
21 interrogatories, or an evidentiary hearing. The court is required
22 to hold a hearing under this subsection if a designated issue of
23 fact requires a judicial determination regarding the credibility of
24 a witness. The court shall permit the parties to present arguments
25 at the hearing only if the applicant is represented by counsel. If
26 the court orders affidavits or interrogatories, the parties are
27 entitled to propound questions to the applicable witness and, on

1 receipt of the affidavit or interrogatory of the witness, to
2 propound additional questions in relation to the first set of
3 questions. The ~~[and hearings, as well as using personal~~
4 ~~recollection. Also, the]~~ convicting court may conduct a hearing
5 under this subsection or may appoint an attorney or a magistrate to
6 conduct the ~~[hold a]~~ hearing ~~[and make findings of fact]~~. An
7 attorney so appointed shall be compensated as provided in Article
8 26.05 of this code. The ~~[It shall be the duty of the]~~ reporter who
9 is designated to transcribe a hearing held under ~~[pursuant to]~~ this
10 subsection shall ~~[article to]~~ prepare a transcript within 15 days
11 of its conclusion. After the record has been developed by
12 affidavits, depositions, interrogatories, or a hearing, the court
13 shall allow the parties to file proposed findings of fact and
14 conclusions of law. The court may then adopt findings of fact and
15 conclusions of law under this subsection. The clerk of the court
16 shall serve a copy of the findings and conclusions on the state, the
17 applicant, and any counsel for the applicant. The parties must file
18 any objections to the findings and conclusions not later than the
19 15th day after the date each party receives the findings and
20 conclusions. After the parties have filed any objections or the
21 expiration of the period for filing those objections, the clerk
22 shall transmit to the Court of Criminal Appeals, under one cover,
23 the application, answer, motions, any proposed findings or
24 conclusions of law, exhibits, the reporter's record of any
25 evidentiary hearing, the findings and conclusions, the objections,
26 and all other documents that the court used to resolve the
27 applicant's claim. The applicant is not required to file any

1 existing appellate record [~~convicting court makes findings of fact~~
2 ~~or approves the findings of the person designated to make them, the~~
3 ~~clerk of the convicting court shall immediately transmit to the~~
4 ~~Court of Criminal Appeals, under one cover, the application, any~~
5 ~~answers filed, any motions filed, transcripts of all depositions~~
6 ~~and hearings, any affidavits, and any other matters such as~~
7 ~~official records used by the court in resolving issues of fact~~].

8 (e) For purposes of this section, confinement means
9 confinement for any offense or any collateral consequence resulting
10 from the conviction that is the basis of the instant writ for
11 application of habeas corpus.

12 Sec. 4. (a) If a subsequent application for writ of habeas
13 corpus is filed after final disposition of an initial application
14 challenging the same conviction, a court may not consider the
15 merits of or grant relief based on the subsequent application
16 unless the court considers it to be in the best interest of justice
17 or the application contains sufficient specific facts establishing
18 that:

19 (1) the current claims and issues were [~~have not been~~
20 ~~and could~~] not [~~have been~~] presented previously in an original
21 application or in a previously considered application filed under
22 this article because the factual or legal basis for the claim was
23 not discovered [~~unavailable~~] on the date the applicant filed the
24 previous application; [~~or~~]

25 (2) by a preponderance of the evidence, but for a
26 violation of the United States Constitution no rational juror could
27 have found the applicant guilty beyond a reasonable doubt; or

1 (3) by clear and convincing evidence, the original
2 application raised only noncognizable claims, was incompetently
3 investigated or drafted, or was otherwise substandard.

4 (b) For purposes of Subsection (a)(1), a legal basis of a
5 claim is unavailable on or before a date described by Subsection
6 (a)(1) if the legal basis was not recognized by and could not have
7 been reasonably formulated from a final decision of the United
8 States Supreme Court, a court of appeals of the United States, or a
9 court of appellate jurisdiction of this state on or before that
10 date.

11 (c) For purposes of Subsection (a)(1), a factual basis of a
12 claim is unavailable on or before a date described by Subsection
13 (a)(1) if the factual basis was not ascertainable through the
14 exercise of reasonable diligence on or before that date.

15 (d) If the Court of Criminal Appeals dismisses or denies a
16 successive application for a writ of habeas corpus that is filed in
17 accordance with this article, the court shall indicate in its order
18 whether the court has:

19 (1) dismissed the application as an abuse of the writ;
20 or
21 (2) considered the application and denied relief on
22 the merits.

23 Sec. 5. The Court of Criminal Appeals may deny relief upon
24 the findings and conclusions of the hearing judge without docketing
25 the cause, or may direct that the cause be docketed and heard as
26 though originally presented to said court or as an appeal. The
27 Court of Criminal Appeals may direct the district clerk to transmit

1 the appellate record if the court decides the record on direct
2 appeal is necessary to resolve an issue in the application. On
3 ~~Upon~~ reviewing the record the court shall enter its judgment
4 remanding the applicant to custody or ordering his release, as the
5 law and facts may justify. The mandate of the court shall issue to
6 the court issuing the writ, as in other criminal cases. After
7 conviction the procedure outlined in this article ~~Act~~ shall be
8 exclusive and any other proceeding shall be void and of no force and
9 effect in discharging the prisoner.

10 Sec. 6. On ~~Upon~~ any hearing by a district judge by virtue
11 of this article ~~Act~~, the attorney for applicant, and the state,
12 shall be given at least seven full days' notice before such hearing
13 is held.

14 Sec. 7. When the attorney for the state files an answer,
15 motion, or other pleading relating to an application for a writ of
16 habeas corpus, the attorney shall serve in a timely manner a copy of
17 the document on counsel for the applicant or, if the applicant is
18 not represented by counsel, on the applicant. If the convicting
19 court or the Court of Criminal Appeals ~~court~~ issues an order
20 relating to an application for a writ of habeas corpus, the clerk of
21 the court shall mail or deliver in a timely manner ~~to the~~
22 ~~applicant~~ a copy of the ~~[answer, motion, pleading, or]~~ order to the
23 state and to the applicant's counsel or, if the applicant is not
24 represented by counsel, the applicant.

25 Sec. 8. Ex parte communications regarding the substance or
26 procedure of the application between counsel for the state or the
27 defense and the convicting court are prohibited. The following

1 communications are not considered to be ex parte communications for
2 purposes of this section:

- 3 (1) the application for a writ of habeas corpus; and
4 (2) communications regarding the scheduling of any
5 hearing under this article.

6 Sec. 9. At or before the time of a document's filing, the
7 filing party must serve a copy on all parties to the proceeding,
8 except that this section does not require a party to serve a copy of
9 the record. Service on a party represented by counsel must be made
10 on the party's lead counsel. Service may be in person, by mail, by
11 commercial delivery service, or by fax. Personal service includes
12 delivery to any responsible person at the office of the lead counsel
13 for the party served.

14 SECTION 2. The change in law made by this Act applies to an
15 initial or subsequent application for a writ of habeas corpus filed
16 on or after January 1, 2008. An application filed before January 1,
17 2008, is covered by the law in effect when the application was
18 filed, and the former law is continued in effect for that purpose.

19 SECTION 3. This Act takes effect September 1, 2007.