

By: Smithee

H.B. No. 2873

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the procedures for an application for a writ of habeas
3 corpus in certain felony cases where the state agrees to relief.

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

5 SECTION 1. Chapter 11, Code of Criminal Procedure, is
6 amended by adding Article 11.075 to read as follows:

7 Art. 11.075. PROCEDURES IN CERTAIN FELONY CASES WHERE STATE
8 AGREES TO RELIEF

9 Sec. 1. Notwithstanding Article 11.07, this article
10 establishes the procedures for an application for a writ of habeas
11 corpus in a felony case in which:

12 (1) the applicant seeks relief from a judgment of
13 conviction that imposes a sentence of confinement that is not
14 suspended; and

15 (2) the state agrees that the applicant is entitled to
16 relief.

17 Sec. 2. An application for a writ of habeas corpus under
18 this article must be filed with the clerk of the convicting court.

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

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

1 (b) At the time the application is filed, the clerk of the
2 court shall assign the case a file number ancillary to that of the
3 judgment of the conviction being challenged.

4 Sec. 5. (a) Not later than the 60th day after the date on
5 which the application is filed, the trial court shall enter a
6 written order granting or denying the relief sought in the
7 application. The court may grant the relief requested in the
8 application only to the extent that the relief is agreed to by the
9 state.

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

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

16 (d) The court may appoint an attorney or magistrate to hold
17 a hearing ordered under this article and make findings of fact. An
18 attorney appointed under this subsection is entitled to
19 compensation as provided by Article 26.05.

20 Sec. 6. If the application is denied, the applicant may
21 appeal under Article 44.02 and Rule 31, Texas Rules of Appellate
22 Procedure.

23 Sec. 7. (a) If a subsequent application for a writ of
24 habeas corpus is filed after final disposition of an initial
25 application under this article, a court may not consider the merits
26 of or grant relief based on the subsequent application unless the
27 application contains sufficient facts establishing that the

1 current claims and issues have not been and could not have been
2 presented previously in an original application or in a previously
3 considered application filed under this article because the factual
4 or legal basis for the claim was unavailable on the date the
5 applicant filed the previous application.

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

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

16 SECTION 2. This Act takes effect immediately if it receives
17 a vote of two-thirds of all the members elected to each house, as
18 provided by Section 39, Article III, Texas Constitution. If this
19 Act does not receive the vote necessary for immediate effect, this
20 Act takes effect September 1, 2017.