

By: Cook

H.B. No. 115

Substitute the following for H.B. No. 115:

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C.S.H.B. No. 115

A BILL TO BE ENTITLED

AN ACT

relating to postconviction applications for a writ of habeas corpus.

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

SECTION 1. Article 1.051(d), Code of Criminal Procedure, is amended to read as follows:

(d) An eligible indigent defendant is entitled to have the trial court appoint an attorney to represent the defendant ~~[him]~~ in the following appellate and postconviction habeas corpus matters:

(1) an appeal to a court of appeals;

(2) an appeal to the Court of Criminal Appeals if the appeal is made directly from the trial court or if a petition for discretionary review has been granted;

(3) a habeas corpus proceeding if:

(A) the defendant raises a claim governed by Article 11.073; or

(B) the court concludes that the interests of justice require representation; and

(4) any other appellate proceeding if the court concludes that the interests of justice require representation.

SECTION 2. Section 5, Article 11.07, Code of Criminal Procedure, is amended to read as follows:

Sec. 5. (a) Except as provided by Subsection (b), the ~~[The]~~ Court of Criminal Appeals may deny relief upon the findings and

1 conclusions of the hearing judge without docketing the cause, or
2 may direct that the cause be docketed and heard as though originally
3 presented to said court or as an appeal. Upon reviewing the record
4 the court shall enter its judgment remanding the applicant to
5 custody or ordering the applicant's ~~[his]~~ release, as the law and
6 facts may justify. The mandate of the court shall issue to the
7 court issuing the writ, as in other criminal cases. After
8 conviction the procedure outlined in this article ~~[Act]~~ shall be
9 exclusive and any other proceeding shall be void and of no force and
10 effect in discharging the prisoner.

11 (b) The court of criminal appeals may not deny relief on a
12 claim governed by Article 11.073 except by a written decision
13 addressing the merits of the claim.

14 SECTION 3. Section 5, Article 11.071, Code of Criminal
15 Procedure, is amended by adding Subsection (g) to read as follows:

16 (g) Notwithstanding any other provision of this section,
17 the court of criminal appeals may consider a subsequent application
18 that fails to satisfy the requirements of Subsection (a) if the
19 court finds that justice requires the court to consider the
20 application. If the court of criminal appeals makes the finding
21 described by this subsection, the convicting court may take further
22 action on the application. If the court of criminal appeals does
23 not make the finding described by this subsection, the court shall
24 issue an order dismissing the application as an abuse of the writ
25 under this section.

26 SECTION 4. Section 6(b-1), Article 11.071, Code of Criminal
27 Procedure, is amended to read as follows:

1 (b-1) If the convicting court receives notice that the
2 requirements of Section 5 [~~5(a)~~] for consideration of a subsequent
3 application have been met and if the applicant has not elected to
4 proceed pro se and is not represented by retained counsel, the
5 convicting court shall appoint, in order of priority:

6 (1) the attorney who represented the applicant in the
7 proceedings under Section 5, if the attorney seeks the appointment;

8 (2) the office of capital and forensic writs, if the
9 office represented the applicant in the proceedings under Section 5
10 or otherwise accepts the appointment; or

11 (3) counsel from a list of competent counsel
12 maintained by the presiding judges of the administrative judicial
13 regions under Section 78.056, Government Code, if the office of
14 capital and forensic writs:

15 (A) did not represent the applicant as described
16 by Subdivision (2); or

17 (B) does not accept or is prohibited from
18 accepting the appointment under Section 78.054, Government Code.

19 SECTION 5. Article 11.073, Code of Criminal Procedure, is
20 amended to read as follows:

21 Art. 11.073. PROCEDURE RELATED TO CERTAIN SCIENTIFIC
22 EVIDENCE. (a) This article applies to relevant scientific
23 evidence that:

24 (1) was not reasonably available to be offered by a
25 convicted person at the convicted person's trial; or

26 (2) contradicts or tends to negate scientific evidence
27 relied on by the state at trial.

1 (b) A court may grant a convicted person relief on an
2 application for a writ of habeas corpus if:

3 (1) the convicted person files an application, in the
4 manner provided by Article 11.07, 11.071, or 11.072, containing
5 specific facts indicating that:

6 (A) relevant scientific evidence is currently
7 available and was not available at the time of the convicted
8 person's trial because the evidence was not ascertainable through
9 the exercise of reasonable diligence by the convicted person before
10 the date of or during the convicted person's trial; and

11 (B) the scientific evidence would be admissible
12 under the Texas Rules of Evidence at a trial held on the date of the
13 application; and

14 (2) the court makes the findings described by
15 Subdivisions (1)(A) and (B) and also finds that, had the scientific
16 evidence been presented at trial, there is a reasonable likelihood
17 the scientific evidence could have affected the person's conviction
18 or the sentence imposed [~~on the preponderance of the evidence the~~
19 ~~person would not have been convicted~~].

20 (c) [~~For purposes of~~] Section 4(a)(1), Article 11.07,
21 Section 5(a)(1), Article 11.071, and Section 9(a), Article 11.072,
22 apply to a claim governed by this article only if the claim has been
23 previously presented in an application filed by an attorney [~~or~~
24 ~~issue could not have been presented previously in an original~~
25 ~~application or in a previously considered application if the claim~~
26 ~~or issue is based on relevant scientific evidence that was not~~
27 ~~ascertainable through the exercise of reasonable diligence by the~~

1 ~~convicted person on or before the date on which the original~~
2 ~~application or a previously considered application, as applicable,~~
3 ~~was filed].~~

4 (d) In making a finding as to whether relevant scientific
5 evidence was not ascertainable through the exercise of reasonable
6 diligence ~~[on or]~~ before the ~~[a specific]~~ date of or during the
7 convicted person's trial, the court shall consider whether the
8 field of scientific knowledge, a testifying expert's scientific
9 knowledge, or a scientific method on which the relevant scientific
10 evidence is based has changed since ~~[~~

11 ~~(1)] the applicable trial date or dates [~~ ~~, for a~~
12 ~~determination made with respect to an original application, or~~

13 ~~(2) the date on which the original application or a~~
14 ~~previously considered application, as applicable, was filed, for a~~
15 ~~determination made with respect to a subsequent application].~~

16 SECTION 6. Chapter 11, Code of Criminal Procedure, is
17 amended by adding Article 11.66 to read as follows:

18 Art. 11.66. WRIT TO INVOKE DISTRICT COURT JURISDICTION FOR
19 PURPOSE OF OBTAINING RELEVANT DOCUMENTS FOR POSTCONVICTION WRIT OF
20 HABEAS CORPUS APPLICATION. (a) A person may file a writ under this
21 article in a district court for the purpose of invoking the court's
22 jurisdiction to obtain documents described by Subsection (b)(2)(B)
23 related to filing an application for a writ of habeas corpus under
24 this chapter.

25 (b) A person may file a petition for a writ under this
26 article only if:

27 (1) the person is an attorney licensed in this state;

1 (2) the person affirms in the petition that:

2 (A) the person is seeking to file an application
3 for a writ of habeas corpus on behalf of an applicant after a final
4 conviction; and

5 (B) the person cannot in good faith file the
6 application until the person obtains documents relevant to a ground
7 for relief in the application; and

8 (3) the person provides the office of the attorney
9 representing the state in the applicant's case with reasonable
10 notice of the person's intention to file a petition for a writ under
11 this article.

12 (c) A district court's jurisdiction under this article is
13 limited only to matters relating to:

14 (1) a petition for a writ under this article; and

15 (2) the issuance of documents requested by the
16 petition for a writ under this article.

17 SECTION 7. Section 24.011, Government Code, is amended to
18 read as follows:

19 Sec. 24.011. WRIT POWER. A judge of a district court may,
20 either in termtime or vacation, grant a writ [~~writs~~] of mandamus,
21 injunction, sequestration, attachment, garnishment, certiorari,
22 and supersedeas, a writ to issue documents under Article 11.66,
23 Code of Criminal Procedure, and any [~~all~~] other writ [~~writs~~]
24 necessary to the enforcement of the court's jurisdiction.

25 SECTION 8. The changes in law made by this Act apply only to
26 an application for a writ of habeas corpus filed on or after the
27 effective date of this Act. An application filed before the

1 effective date of this Act is governed by the law in effect on the
2 date the application was filed, and the former law is continued in
3 effect for that purpose.

4 SECTION 9. This Act takes effect December 1, 2025.