

TEXAS COURT OF CRIMINAL APPEALS

Felix Cisneros v. The State of Texas

Cisneros · No. F11-60536-U · Decided December 7, 2015

SUMMARY

This document is a pro se petition for writ of mandamus filed by Felix H. Cisneros in the Texas Court of Criminal Appeals. The petitioner asks the court to order the 291st Judicial District Court and the State to comply with the procedures for answering and processing his Texas Code of Criminal Procedure article 11.07 habeas corpus application.

CASE DETAILS

COURT	Texas Court of Criminal Appeals
JURISDICTION	Texas
DECIDED	December 7, 2015
DOCKET	F11-60536-U
PROCEDURAL POSTURE	Petition for writ of mandamus seeking an order directing the convicting court to require the State to answer a post-conviction application for writ of habeas corpus under Texas Code of Criminal Procedure article 11.07, section 3(b).
STANDARD OF REVIEW	Mandamus requires a clear abuse of discretion or failure to perform a ministerial duty and an inadequate remedy by appeal. A clear right to mandamus relief must be clear and indisputable.
PRECEDENTIAL VALUE	Unclear from the document; the text appears to be a pro se mandamus petition rather than a disposition resolving the merits.
PARTIES	Felix H. Cisneros v. The State of Texas

TOPICS

- state post-conviction relief
- habeas corpus
- appellate procedure
- remedies
- criminal procedure

PRACTICE AREAS

- post-conviction habeas corpus
- criminal procedure
- mandamus

QUESTIONS PRESENTED

1. Whether the convicting court or responsible officials failed to perform a ministerial duty under Texas Code of Criminal Procedure article 11.07, section 3(b), by failing to ensure that the State answered Cisneros's habeas application.
2. Whether mandamus was an available remedy for the alleged failure to perform that ministerial duty.

FACTUAL BACKGROUND

Cisneros was convicted of aggravated sexual assault with a deadly weapon and sentenced to life imprisonment in the Texas Department of Criminal Justice. After his direct appeal became final, he filed an article 11.07 post-conviction habeas application in the convicting court. He alleged that the State failed to file the answer required by article 11.07, section 3(b), and that he received no notice concerning the status of his application.

PROCEDURAL HISTORY

Cisneros was convicted in the 291st Judicial District Court of aggravated sexual assault with a deadly weapon and received a life sentence on October 25, 2012. His direct appeal was mandated on June 25, 2014. He filed an article 11.07 application for writ of habeas corpus in the convicting court on April 7, 2015, and later sought an order requiring the State to answer, alleging that no answer or notice had been provided. He then filed this mandamus petition in the Texas Court of Criminal Appeals.

CASES CITED

- In re H.E. Butt Grocery Co., 17 S.W.3d 360 (Tex. 2000)
- Walker v. Packer, 827 S.W.2d 833 (Tex. 1992)
- In re Piper, 105 S.W.3d 107 (Tex. 2003)
- In re Schmitz, 285 S.W.3d 451 (Tex. 2009)
- In re Paso Del Norte Surgical Center, 281 S.W.3d 521 (Tex. 2008)

OPINION

PER CURIAM.

CAUSE NO. F11-60536-U ~J81Q 'BISOOV 1aqv IN RE FELIX CISNEROS § IN THE TEXAS COURT v. OF CRIMINAL APPEALS THE STATE OF TEXAS AUSTIN, TEXAS Sl'v'3dd\!JHI'~I~fti~::~k~fi1P8 NI Q3l\13Q3U TO THE HONORABLE UUSTICES OF SAID COURT: COMES NOW, FELIX H. CISNEROS, Petitioner herein; and would respectfully show this Court the following: Petitioner (Cisneros) was convicted in the 291st Judicial District Court fo~ Aggravated Sexual Assault with ~ Deadly Weap6n and. sentenced to serve a Life sentence in the Texas Department of Cri~inal Justice-Institutional Division on October 25, 2012.

Cisneros' direct appeal was mandated on June 25, 2014. He then filed his Writ of Habeas corpus, Art. 11.07 (TEX. CODE CRIM. P.) on April 7, 2015. He subsequently filed a petition 4nto that Court to order the State to answer his writ pursuant to TEX. CODE.CRIM. P. ·Art. 11.07 §3(b); however this was met with silence. · Traditionally, a writ of mandamus is issued only to compel

the performance of a ministerial act or duty, but the writ is also available to correct a clear abuse of discretion by the trial court.

Further, a trial court abuses its discretion for mandamus purposes if it reaches a decision so arbitrary and unreasonable as to amount to a clear and prejudicial error of law. In *RE H.E. Butt Grocery Co.*, 17 S.W.3d 360 (Tex. 2000), 366-67; *Walker v. Packer*, 82/ S.W.2d 833, 839 (Tex. 1992). . Mandamus may be available upon: 1) a showing that a trial court clearly abused its discretion. b~ failing to correctly apply the law, and 2) the benefits and detriments of mandamus render appeal inadequate.

In *RE, Pi~er*, 105 S.W.3d 107 (Tex. 2003); In *RE Schmitz*, 285 S.W.3d 451 (Tex. 009)... . For mandamus purposes, a ministerial act requirement is requirement that Relator has "a clear right to the relief sought," meaning that the relief sought must be "clear and indisputable" such that its merits are "beyond dispute" with "nothing left to the exercise of discretion or judgement." Id. *Piper*, at 108[4].

Furthermore, a trial court has no discretion in de~rmining what the law is or in applying the law to facts, thus, said failure by the trial court to analyze or apply the law correctly will ~onstitute an abus~ of discretion.

In *RE Paso Del Norte Surg. Ctr.*, 281 S~W. 3d 521 (Tex. 2008). Texas Code of~riminal Procedure, Art. 11.07 §3(b) reads in ~pertinent part that the attorney representing the State "shall answer the application not later than the 15th day after the date the copy of the application is recieved." This statute is clear. Cisneros filed his post conviction writ of habeas corpus into the 291st Judicial District Court on April 7, 2015 and to date, the State has failed to answer said writ. §3 (b) ~lso states that the court clerk is~ responsible for insuring the application is assinged to that court.

For this purpose, right or wrong, Cisneros is presuming the clerk of the court has complied with her mini~terial duty. §3 (c) ord~rs the convicting court to decid~ whether there are controverted; previously unresolved facts material to the legality of applicant s confinement. With or without findings, the clerk is suppose to file all of the documents into the Court of Criminal Appeals.: Tb aate, Cisneros has not recieved no'tice from any court pertaining to his writ of habeas corpus. . The law is clear and indisputable.

The court recieved notice from Cisneros that the State's ministerial duty had been abandoned, and given the court's knowledge of this fact atid its failuie to rectify the problem, renders its decisions here arbitrary and unreasonable- a clear abuse of discretion-leaving only mandamus as the viable remedy. Cisneros would ask the Honorable Court by way of relief, to order the 291st Judicial Court to fulfill its ~inisterial duty and demand the State to properly answer his writ of habeas

corpus as the law prescribes. · Petitioner prays this Honorable Court will grant the appropriate relief as requested.

Under penalty of perjury, Petitioner, Felix Cisneros, avers to all.of · the facts and statements herein. He also swears that a copy of this mandamus was forwarded to the convicting court..)-. Signed this JS-.-:day of· De~_ember, 2015. Mr. Felix H. Cisneros # /Fc:!!~9 7t.. TDCJ-ID-Bilr Clements Unit 9601 Spur 591 Amarillo, TX 79107