

TEXAS COURT OF CRIMINAL APPEALS

Felix Cisneros v. The State of Texas

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

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 Q3\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 Criminal 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 received." 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) also states that the court clerk is responsible for insuring the application is assigned to that court.

For this purpose, right or wrong, Cisneros is presuming the clerk of the court has complied with her ministerial duty. §3 (c) orders the convicting court to decide whether there are controverted; previously unresolved facts material to the legality of applicant's confinement. With or without findings, the clerk is supposed to file all of the documents into the Court of Criminal Appeals. To date, Cisneros has not received notice from any court pertaining to his writ of habeas corpus. The law is clear and indisputable.

The court received notice from Cisneros that the State's ministerial duty had been abandoned, and given the court's knowledge of this fact and its failure 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 ministerial 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 December, 2015. Mr. Felix H. Cisneros # /Fc:~9 7t.. TDCJ-ID-Bilr Clements Unit 9601 Spur 591 Amarillo, TX 79107