

Another writs checklist

A handy guide to Texas Code of Criminal Procedure art. 11.072 writs of habeas corpus

Whether you respond to applications for writ of habeas corpus every day or once every six months, a checklist can be invaluable in planning and organizing your response. Here is a checklist specifically for article 11.072 applications



By Andréa Jacobs
Assistant Criminal
District Attorney in
Tarrant County

for writ of habeas corpus (non-revoked community supervision in misdemeanor or felony cases, ruled on by the trial court and appealable).

Editor's note: TDCAA will publish Andréa's book, Writs, in early 2016. Look for more information on our website, www.tdcaa.com, in January.

First of all, some calendar deadlines¹

30 days from receipt of application. (One 30-day extension could be granted for good cause.)

State's response due

60 days after day the State's response is filed

The trial court shall grant or deny relief. No dismissal or extension is available.

Can it be denied on procedural or frivolous grounds? (Is dismissal not available?)

- Is 11.072 the right vehicle? Is/was the applicant on non-revoked community supervision?²
- Is this a subsequent application? (It does not overcome the §9 subsequent writ bar.)
- Is this a challenge to the legal validity of:
 - 1) the conviction or order placing on community supervision *or*
 - 2) the conditions of community supervision?
- Can the applicant obtain the requested relief by an appeal?³
- If attacking the conditions of community supervision, has the applicant filed and presented a motion to amend the conditions to the trial court?⁴
- If attacking the conditions of community supervision, is the attack on constitutional grounds?⁵
- Are these claims cognizable?
- Are the applicant's claims moot? (Note: Revocation alone *does not* render claims moot.)
- From the face of the application and documents attached, is it clear that the applicant is manifestly entitled to no relief?⁶
- Has the applicant died?

Investigation

- What are the claims?
- Order records to familiarize yourself with the case—trial files, probation records, etc.
- Do you need evidence to properly respond to claims? (Is it a purely legal claim?)
 - 1) Do you have the evidence (e.g., appellate record, witness statements, etc.)?
 - 2) Do you need affidavits (e.g., ineffective assistance of counsel [IAC], involuntary plea, unconstitutional conditions, etc.)?
- Is a hearing needed? (e.g., actual innocence, IAC, etc.)

Do you need an affidavit or hearing?

- Contact the affiant to find out how much time is needed to comply.
- Request an order for affidavit by:
 - 1) Filing a motion for extension (30 days maximum) and a motion for an affidavit/hearing (recommended) *or*
 - 2) Filing the State's response requesting an affidavit/hearing ordered (but doing this is not recommended because it cuts down the amount of time the trial court has to ultimately rule on the application after receipt of evidence).

State's response

- Request one 30-day extension for good cause.⁷
- Respond on the merits.
- Request an order for affidavit (though this is not recommended because it cuts down the amount of time the trial court has to ultimately rule on the application after receipt of evidence).
- Request a hearing (also not recommended because it cuts down the amount of time the trial court has to ultimately rule on the application after receipt of evidence).
- Request a scheduling order for deadlines.
- Note: If the State does not respond, matters "not admitted by the State are considered to have been denied" by the State.⁸

Continued on page 42

Continued from page 41

Findings of fact

- If it cannot be determined from the application and attached documents alone that the applicant is manifestly entitled to no relief, the trial court *must* enter findings of fact.⁹
- Should be separate from conclusions of law (discussed below).
- Address every claim.
- Consider organizing findings by ground for clarity if there are multiple grounds.
- Every finding should have a citation to the record or a clear explanation as to its origin (e.g., trial court's personal recollection).
- Each finding should contain only one fact.
- List in a logical order; it should read like a road map for the trial court.

Conclusions of law

- If it cannot be determined from the application and attached documents alone that the applicant is manifestly entitled to no relief, the trial court *must* enter conclusions of law.¹⁰
- Should be separate from findings of fact (discussed above).
- Address every claim.
- Consider organizing findings by ground for clarity if there are multiple grounds.
- Every finding should have a citation to the record or a clear explanation as to its origin (e.g., trial court's personal recollection).
- Each conclusion of law should contain only one conclusion.
- List in a logical order; it should read like a road map for the trial court.

Order

- If trial court determines from the face of the application and attached documents alone that the applicant is manifestly entitled to no relief, the trial court *shall* enter a written order denying the application as frivolous.¹¹
- If filing findings of fact and conclusions of law (because the application is not frivolous), always prepare:
 - 1) a proposed order for the trial court to sign adopting your proposed findings/conclusions or
 - 2) a proposed order that includes the desired findings/conclusion unless local rules dictate otherwise.
- The trial court hears the evidence and resolves credibility issues.
- The trial court rules on the application.¹²

Objections

If the State is concerned the trial court will adopt the applicant's proposed findings, file objections to the proposed findings as soon as reasonably possible.

Appeal¹³

- If denied, in whole or in part, the applicant may appeal.
- If granted, in whole or in part, the State may appeal.

Endnotes

1 Tex. Code Crim. Proc. art. 11.072, §5(c);6(a).

2 *Id.* at §2(b).

3 *Id.* at §3(a).

4 *Id.* at §3(b).

5 *Id.* at §3(c).

6 *Id.* at §7(a).

7 *Id.* at §5(c).

8 *Id.* at §5(e).

9 *Id.* at §7(a).

10 *Id.*

11 *Id.*

12 *Id.* at §6.

13 *Id.* at §8.