AFFIRMED and Opinion Filed July 23, 2020

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-19-01249-CR

EX PARTE MARIO ENRIQUE VALADEZ

On Appeal from the 86th Judicial District Court
Kaufman County, Texas
Trial Court Cause No. 24491A-86

MEMORANDUM OPINION

Before Justices Partida-Kipness, Nowell, and Evans
Opinion by Justice Nowell

Mario Enrique Valadez appeals the trial court's order denying relief on his post-conviction application for writ of habeas corpus. In his sole issue, appellant contends the trial court erred in denying his writ application because he entered his guilty plea involuntarily due to ineffective assistance of counsel. We affirm.

BACKGROUND

In 2007, appellant entered a negotiated guilty plea to the offense of possession of cocaine in an amount less than one gram. The trial court accepted the plea bargain agreement, placed appellant on deferred adjudication community supervision for

two years, and assessed a $1,500 fine. Appellant served out the term of community supervision and was discharged in 2009.

In 2019, appellant filed an application for writ of habeas corpus contending counsel rendered ineffective assistance by affirmatively misadvising him about the deportation consequences of his plea. Appellant supported his writ application with his own affidavit and an affidavit from counsel.

Appellant's affidavit set forth his complaints about counsel's performance and his lack of understanding of the plea papers, the proceedings, and the deportation consequences of his plea. Appellant did not offer a justification for the twelve-year delay in bringing his claim. Counsel's affidavit averred she has no recollection of representing appellant and no records of the case because of the passage of time.

In its response, the State argued laches should bar appellant's claim and, alternatively, it should be denied on the merits. The State attached to its response an order showing the trial court gave the Kaufman Police Department permission to destroy the drug evidence in this case and an affidavit of Detective Jason Stastny, an evidence technician, who averred the drug evidence was destroyed in 2015.

The trial court denied appellant's writ application without conducting a hearing. In its findings of fact, the trial court found counsel's and Stastny's affidavits credible. The trial court found almost twelve years had passed since appellant's plea hearing, and the Kaufman Police Department had destroyed all of the evidence in

the case. The trial court also made a number of findings adverse to appellant's position on the merits.

The trial court concluded laches bars appellant's writ application because he waited twelve years to bring his claim, he did not justify the delay, and the State had shown it would be prejudiced if appellant's conviction was reversed and the case retried. The trial court also concluded appellant had failed to meet his burden to show ineffective assistance of counsel and he had failed to rebut the prima facie showing that his plea was voluntary.

On appeal, appellant contests only the trial court's findings and conclusions regarding the merits of his ineffective assistance claim. Appellant does not address the trial court's findings of fact and conclusion of law that laches bars his claim.

STANDARD OF REVIEW

In reviewing the denial of habeas relief, we review the record evidence in the light most favorable to the trial court's ruling and uphold the trial court's ruling absent an abuse of discretion. *Kniatt v. State*, 206 S.W.3d 657, 664 (Tex. Crim. App. 2006). A trial court abuses its discretion if it acts without reference to any guiding rules or principles. *State v. Simpson*, 488 S.W.3d 318, 322 (Tex. Crim. App. 2016).

The habeas applicant bears the burden of proving their claim by a preponderance of the evidence. *Ex parte Torres*, 483 S.W.3d 35, 43 (Tex. Crim. App. 2016). When an applicant brings a habeas challenge to a conviction that resulted in community supervision, the application must be filed pursuant to article

11.072 of the code of criminal procedure. *Id.* at 42. In reviewing an appeal arising from an 11.072 writ application, the appellate courts have less leeway to disregard the trial court's factual findings. *Id.* The trial court is the sole finder of fact, and "we afford almost total deference to a trial court's factual findings when they are supported by the record, especially when those findings are based upon credibility and demeanor." *Id.* We defer to the trial court's fact findings supported by the record even when such findings are based on affidavits rather than live testimony. *State v. Guerrero*, 400 S.W.3d 576, 583 (Tex. Crim. App. 2013). If, however, the trial court's determinations are questions of law, or mixed questions of law and fact that do not turn on an evaluation of witnesses' credibility and demeanor, then we review them *de novo*. *Ex parte Weinstein*, 421 S.W.3d 656, 664 (Tex. Crim. App. 2014).

ANALYSIS

Appellant does not challenge the trial court's findings and conclusion that laches bars his ineffective assistance complaint. Due to appellant's failure to challenge an independent ground for the trial court's ruling, we may accept the validity of the unchallenged ground and affirm the trial court's order on that basis. *See Marsh v. State*, 343 S.W.3d 158, 161–62 (Tex. App.—Texarkana 2011, pet. ref'd); *see also State v. Hoskins*, No. 05-13-00416-CR, 2014 WL 4090129, at *2 (Tex. App.—Dallas Aug. 19, 2014, no pet.) (not designated for publication) (appellant must challenge all independent grounds that fully support judgment or appealable order and appellate court will accept validity of any unchallenged

independent ground thus rendering harmless any error in grounds challenged on appeal) (citing *Moore v. State*, 605 S.W.2d 924, 926 (Tex. Crim. App. [Panel Op.] 1980) (defendant appealing probation revocation must challenge each independent ground of revocation)); *Sendejas v. State*, No. 14-16-00710-CR, 2018 WL 1866049, at *2 (Tex. App.—Houston [14th Dist.] Apr. 19, 2018, no pet.) (mem. op., not designated for publication) (to prevail on appeal from probation revocation, appellant must challenge all findings supporting revocation to show trial court abused its discretion) (citing *Moore*, 605 S.W.2d at 926).

Laches may bar habeas relief when an applicant's lengthy delay in applying for relief prejudices the State's position in a manner that outweighs any equitable considerations militating in favor of granting the applicant relief. *Ex parte Perez*, 398 S.W.3d 206, 217 (Tex. Crim. App. 2013). Prejudice to the State requires no particularized showing and may include anything that places the State in a less advantageous position such as the diminished memories of trial participants and diminished availability of evidence. *See id.* at 215–16. There is no fixed period beyond which laches necessarily applies, but "delays of more than five years may generally be considered unreasonable in the absence of any justification for the delay." *Id.* at 216 n.12. The longer an applicant delays in bringing his claim, especially when the delay exceeds five years after the conclusion of direct appeals, the less evidence the State must present to show prejudice. *Id.* at 217–18. In determining whether laches should apply, a court must engage in a difficult and

sensitive balancing process considering all relevant circumstances and may consider such factors as the length of the delay, any reason or justification for the delay, and the degree and type of prejudice resulting from the delay. *See id*. at 217.

In this case, the trial court made unchallenged findings that appellant waited twelve years to bring his habeas application and the State has destroyed the evidence in the interim. Appellant does not challenge the trial court's conclusion of law that laches should bar his claim because of the lengthy delay, his failure to justify the delay, and the State's showing that it would be prejudiced if the case was retried at this point. The trial court's findings and conclusion are supported by the record. *See Torres*, 483 S.W.3d at 42 (we defer to trial court's fact findings supported by record).

Because appellant failed to challenge the trial court's supported findings and conclusion that laches bars his claim, we conclude he has not met his burden to show the trial court abused its discretion in denying his habeas application. *See id*.; *Perez*, 398 S.W.3d at 215–17; *Kniatt*, 206 S.W.3d at 664; *Marsh*, 343 S.W.3d at 161–62; *see also Hoskins*, 2014 WL 4090129, at *2. We overrule appellant's sole issue.

We affirm the trial court's order denying relief on appellant's application for writ of habeas corpus.

/Erin A. Nowell/
ERIN A. NOWELL
JUSTICE

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JUDGMENT

EX PARTE MARIO ENRIQUE VALADEZ	On Appeal from the 86th Judicial District Court, Kaufman County, Texas
No. 05-19-01249-CR	Trial Court Cause No. 24491A-86. Opinion delivered by Justice Nowell. Justices Partida-Kipness and Evans participating.

Based on the Court's opinion of this date, the order of the trial court denying appellant's application for writ of habeas corpus is **AFFIRMED**.

Judgment entered this 23rd day of July, 2020.