SUBJECT: Procedures for writs of habeas corpus in probation cases

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Keel, Riddle, Ellis, Denny, Hodge, Talton

0 nays

3 absent — Dunnam, P. Moreno, Pena

WITNESSES: For — *(Registered, but did not testify:)* Keith Hampton, Texas Criminal Defense Lawyers Association

Against — None

BACKGROUND: Defendants convicted of misdemeanor or felony offenses in Texas may challenge their convictions in two ways: with a direct appeal, which deals only with errors of fact or law in the original trial, and by an application for habeas corpus, which can raise issues outside of the trial record. Applications for habeas corpus typically center on constitutional rights and may be filed in both state and federal court.

Code of Criminal Procedure, art. 11, outlines the procedures for habeas corpus and explains that a writ of habeas corpus is the remedy to be used when a person's liberty is restrained. Code of Criminal Procedure, art. 11.23, specifies that the writ of habeas corpus is applicable to all cases of confinement and restraint, where the person exercising the power has no lawful right to do so, or where it is exercised in a manner or degree not sanctioned by law. Code of Criminal Procedure, art. 11.07, allows a defendant to apply for a writ of habeas corpus after *final conviction* in a felony case in which the death penalty is not imposed.

Code of Criminal Procedure, art. 11.05, provides that the Court of Criminal Appeals, district courts, county courts, or any judge of those courts have power to issue the writ of habeas corpus and that it is their duty to grant the writ under the rules prescribed by law.

The Texas Constitution, Art. 1, sec. 12, provides that the writ of habeas corpus is a writ of right, and shall never be suspended. The Legislature shall enact laws to render the remedy speedy and effectual.

DIGEST:

HB 1713 add Code of Criminal Procedure, art. 11.072, to establish a procedure for offenders who have been placed on community supervision for a felony or misdemeanor offense to apply for writs of habeas corpus. The applicant would have to file the application with the clerk of the court that imposed community supervision, and the application would have to challenge the legal validity of the underlying conviction or the conditions of community supervision.

If the applicant could obtain the requested relief by filing an appeal, then the applicant would be barred from seeking a writ of habeas corpus. Furthermore, an offender seeking relief from a particular condition of community supervision, but not challenging the conviction itself, would have to file a motion to amend the conditions of community supervision before applying for a writ. An applicant only could challenge a condition of community supervision on constitutional grounds.

HB 1713 would require the applicant to serve a copy of the application on the attorney representing the state and would establish a time frame and procedures for the state to respond to the application.

The bill would specify that the trial court could order affidavits, depositions, interrogatories, or a hearing to assist in its decision or could rely on the court's recollection of the case. Furthermore, the court could order a magistrate to hold the hearing and could appoint counsel to represent the applicant.

The court would be required to deny as frivolous in a written order an application that on its face was not entitled to relief, and would be required to enter a written order including findings of fact and conclusions of law in any other case. Both the applicant and the state would have the right to appeal adverse rulings.

The bill would limit a defendant to one application for a writ of habeas corpus per conviction and would not allow subsequent applications unless the

applicant established that the current claims have not been and could not have been presented in an original application or in a previously considered application because the factual or legal basis for the claim was unavailable at the time.

HB 1713 also would amend Code of Criminal Procedure, art. 44.01, to clarify that the state is entitled to appeal an order granting relief to an applicant for a writ of habeas corpus under art. 11.072.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2003.

SUPPORTERS SAY:

HB 1713 would establish procedures for a defendant placed on community supervision to apply for a writ of habeas corpus to challenge the conviction or the constitutionality of a condition of probation. While it is true that defendants may apply for a probation writ under Texas Constitution, Art. 1, sec. 12, constitutional writs only may be used to raise constitutional claims. A claim of actual innocence is not a constitutional claim, and the innocent should not be excluded from applying for a writ simply because they are on probation. Furthermore, the risk of an innocent person serving a term of probation is great because defendants often agree to a plea bargain rather than contest the charges due to prosecutors' threats to seek a stiffer punishment at trial. Finally, by establishing procedures for a defendant to apply for a writ in a probation case, HB 1713 would help attorneys who currently either are not aware of this right or do not know how to apply for a writ in a probation case.

Code of Criminal Procedure, art. 11.07, which governs applications for final convictions in felony cases, has been interpreted by courts as not applying to offenders on community supervision because they do not have a final conviction unless their probation is revoked, nor are they confined. Defendants placed on community supervision have just as much need to apply for a writ of habeas corpus as defendants who are sentenced to jail or prison, and HB 1713 would fill this gap in the law. It is illogical to allow defendants whose probation has been revoked to apply for a writ but to deny that same right to those who successfully comply with their conditions of probation. Furthermore, Code of Criminal Procedure, art. 11.05, which imposes a duty on courts to grant writs, has been interpreted by courts to be a discretionary

provision, which means that courts do not have to take any action in response to an application for a writ. Other specific provisions in art. 11 make it mandatory for courts to grant writs in certain types of cases, such as felony cases involving a final conviction. HB 1713 would bring probation cases in line with all other types of cases and impose a duty on courts to grant writs according to the rules prescribed by law.

While HB 1713 might lead to an increase in applications for writs, defendants have a right to contest the validity of the conviction or the conditions of community supervision in a probation case. Furthermore, HB 1713 would limit the number of applications by specifying that an application could not be filed if the applicant could obtain the requested relief by means of an appeal or, in a challenge to the constitutionality of a condition of community supervision, if the applicant did not first file a motion to amend the conditions. Finally, HB 1713 would limit subsequent applications in a probation case.

The fact that HB 1713 would establish different time frames than Code of Criminal Procedure, art. 11.07, for the state to respond to an application and for the court to issue findings, would not lead to any real confusion. After all, courts already are required to keep track of different deadlines in numerous types of cases. Furthermore, the deadlines under this bill would not be final, and the court for good cause could grant the state an extension.

Allowing the prevailing party to submit the proposed order would benefit the state in cases where it was the prevailing party because it would have more control over the content of the order. Furthermore, the applicant would have to prepare the order when the applicant prevailed, and it should not be presumed that the state would always prevail on probation writs. Finally, judges in certain counties do not have staff attorneys, and requiring the prevailing party to write an order would assist the courts.

OPPONENTS SAY:

HB 1713 is not necessary because offenders on community supervision already have sufficient recourse to address a wrongful conviction or unfair community supervision terms. Defendants may file an appeal of a wrongful conviction or may file a motion to amend the conditions of community supervision. Furthermore, defendants may object to the terms of community supervision at the time the judge imposes those conditions. Finally,

defendants on community supervision already may file an application for a writ of habeas corpus under the Texas Constitution, Art. 1, sec. 12, which is known as a constitutional writ.

HB 1713 would lead to a large increase in applications for writs of habeas corpus. It is costly and time-consuming for prosecutors and courts to address these claims, and the system could grind to a halt.

The state's response time to an application—30 days— and the court's time to issue findings—60 days— would be different under this bill than in Code of Criminal Procedure, art. 11.07, which could create confusion. Art. 11.07 gives the state 15 days to answer the application for writ of habeas corpus, and the court has 20 days to issue findings. There is no reason for these time frames to be different.

HB 1713 would require the prevailing party to submit the proposed order. Because the state presumably would be the prevailing party in most cases, this would add to prosecutors' already overwhelming workload.