



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-16,370-02

EX PARTE WILL DONNELL SIMMONS, Applicant

**ON APPLICATION FOR A WRITE OF HABEAS CORPUS
CAUSE NO. W91-00848-I(A) IN CRIMINAL DISTRICT COURT NO. 2
DALLAS COUNTY**

MEYERS, J., filed a concurring opinion.

C O N C U R R I N G O P I N I O N

While I agree with the majority's granting Applicant relief, I disagree with the majority's characterization of the mandate for concurrent sentences in this situation as a right. Section 3.03(a) of the Texas Penal Code tells the trial court that when a defendant is convicted of multiple crimes arising out of the same criminal episode that are prosecuted in a single action, the sentences must run concurrently. Therefore, the court does not have the authority to stack these types of sentences. This is different than the defendant having a right which can be waived or forfeited.

In this case, the improper stacking order is based upon the court's lack of authority,

rather than the defendant's assertion of a right. With the exception of the labeling of concurrent sentencing as a right, I join the majority's opinion.

Meyers, J.

Filed: October 28, 2015

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