



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NOS. WR-82,642-01 & WR-82,642-02

EX PARTE ROBERT CANTU, Applicant

**ON APPLICATIONS FOR WRITS OF HABEAS CORPUS
CAUSE NOS. 2008CR11211-W1 & 2008CR11212-W1
IN THE 175TH DISTRICT COURT
FROM BEXAR COUNTY**

Per curiam. YEARY, J., not participating.

OPINION

Pursuant to the provisions of Article 11.07 of the Texas Code of Criminal Procedure, the clerk of the trial court transmitted to this Court these applications for writs of habeas corpus. *Ex parte Young*, 418 S.W.2d 824, 826 (Tex. Crim. App. 1967). Applicant was convicted of two charges of possession with intent to deliver a controlled substance and sentenced to fifteen years' imprisonment in each case. The Fourth Court of Appeals affirmed his convictions. *Cantu v. State*, Nos. 04-09-00521-CR & 04-09-00522-CR (Tex. App.—San Antonio, May 5, 2010) (not designated for publication).

Applicant contends that he is actually innocent and that material impeaching evidence was

withheld from the defense in violation of *Brady v. Maryland*.¹ Specifically, he argues the defense was not made aware of misconduct on the part of arresting officers.

In agreed findings of fact and conclusions of law, the trial court determined that relief should be granted under *Brady*, but that Applicant's actual innocence claim under *Schlup v. Delo*² is unavailing because the constitutional claim upon which it is based is not procedurally barred. *Ex parte Villegas*, 415 S.W.3d 885 (Tex. Crim. App. 2013). We agree with the trial court. Relief is granted on the *Brady* claim. The judgments in Cause Nos. 2008CR11211 and 2008CR11212 in the 175th District Court of Bexar County are set aside, and Applicant is remanded to the custody of the Sheriff of Bexar County to answer the charges as set out in the indictment. The trial court shall issue any necessary bench warrant within 10 days after the mandate of this Court issues.

Copies of this opinion shall be sent to the Texas Department of Criminal Justice-Correctional Institutions Division and Pardons and Paroles Division.

Delivered: April 1, 2015
Do not publish

¹ 373 U.S. 83 (1963).

² 513 U.S. 298 (1995).