



# IN THE COURT OF CRIMINAL APPEALS OF TEXAS

**NO. WR-82,826-01**

**EX PARTE ERIC BIRDEN, Applicant**

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS  
CAUSE NO. 1129319-A IN THE 248<sup>th</sup> DISTRICT COURT  
FROM HARRIS COUNTY**

*Per curiam.*

## 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 this application for a writ of habeas corpus. *Ex parte Young*, 418 S.W.2d 824, 826 (Tex. Crim. App. 1967). Applicant was convicted of possession of cocaine in an amount of less than one gram and sentenced to thirty days' imprisonment.<sup>1</sup> He did not appeal his conviction.

Applicant contends that his plea in this case was involuntary and his conviction violates due process. Specifically, he contends that newly discovered laboratory analysis in this case reflects that

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<sup>1</sup> The Applicant was convicted of a state jail felony and then punished within the range for a Class A misdemeanor pursuant to TEX. PENAL CODE § 12.44(a).

he did not possess any cocaine.

The State and the trial court agree that Applicant is entitled to relief. Applicant's claim is supported by the habeas record. Applicant is entitled to relief. *Ex parte Mable*, 443 S.W.3d 129 (Tex. Crim. App. 2014).

Relief is granted. The judgment in Cause No. 1129319 in the 248<sup>th</sup> District Court of Harris County is set aside, and Applicant is remanded to the custody of the Sheriff of Harris 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: March 4, 2015  
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