



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-83,335-01

EX PARTE DWAYNE KEITH LOPEZ, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 12-11-12182-CR(1) IN THE 221ST DISTRICT COURT
FROM MONTGOMERY 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 driving while intoxicated and sentenced to nineteen years' imprisonment. The Ninth Court of Appeals dismissed his appeal. *Lopez v. State*, No. 09-13-00414-CR (Tex. App.—Beaumont Oct. 30, 2013)(not designated for publication).

Applicant contends that his plea was involuntary because counsel misinformed him that there would not be a deadly weapon finding on his judgment. Trial counsel testified at a hearing held by

the trial court. Based on that testimony, the trial court determined that counsel misunderstood the terms of the plea and therefore miscommunicated the terms to Applicant. The State agrees. Applicant is entitled to relief. *Ex parte Huerta*, 692 S.W.2d 681 (Tex. Crim. App. 1985).

Relief is granted. The judgment in Cause No. 12-11-12182-CR in the 221st District Court of Montgomery County is set aside, and Applicant is remanded to the custody of the Sheriff of Montgomery 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: July 29, 2015
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