



## IN THE COURT OF CRIMINAL APPEALS OF TEXAS

**NO. WR-83,687-01**

**EX PARTE JAMES BLAIR CRESS, Applicant**

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS  
CAUSE NO. 14-09-10369-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 pleaded guilty to possession of a controlled substance and was sentenced to six years' imprisonment. He did not appeal his conviction.

Applicant contends that his plea was involuntary because he was charged with the second degree felony of possession of methamphetamine in an amount of four grams or more but less than 200 grams. Applicant was admonished as to the penalty range for a second degree felony. However,

after Applicant's conviction had become final, the laboratory report was issued showing that the substance possessed by Applicant actually weighed only 3.90 grams. Because this quantity of methamphetamine would only have supported a charge and conviction for a third degree felony, the trial court finds that Applicant's guilty plea was not knowingly and voluntarily entered. *See Ex parte Mable*, 443 S.W.3d 129, 131 (Tex. Crim. App. 2014).

Relief is granted. The judgment in Cause No. 14-09-10369-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. 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: August 26, 2015

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