



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-41,469-01

EX PARTE ROBERT WILLIAM HODSON, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 9419321-A IN THE 208TH 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 pled guilty in 1995 to capital murder under a plea agreement. A life sentence was automatically assessed. There was no direct appeal. Applicant's initial habeas application (the -01), in which he argued that his guilty plea was involuntary because counsel gave him incorrect parole advice, was denied in 1999. A second habeas application (the -02) was dismissed as noncompliant.

Applicant alleges in his -03 habeas application, as he did in his -01 application, that he was misinformed that he would be eligible for parole at thirty-five years as opposed to forty years and

that he relied upon this incorrect advice when entering into his negotiated guilty plea. He argues that he is entitled to relief under this Court's 2012 decision in *Ex Parte Moussazadeh III*, 361 S.W.3d 684 (Tex. Crim. App. 2012). In *Moussazadeh III*, this Court held that trial counsel's misinformation to a murder defendant as to his parole eligibility, which misinformation the defendant relied upon in deciding to plead guilty, prejudiced the defendant and rendered his guilty plea involuntary.

The trial court finds, based on the written plea agreement and counsel's affidavit, "[A]pplicant would not have pled guilty but would have insisted on going to trial but for being given incorrect advice as to his parole eligibility." Even so, the trial court recommends denying relief. It writes, "Despite [Applicant] establishing that he was provided incorrect parole eligibility advice in 1995 for his capital murder plea and that he was prejudiced as a result of the incorrect advice, the instant application should be denied because the holding of *Ex parte Moussazadeh III* should not be retroactively applicable to [Applicant]." This Court has not decided whether the *Moussazadeh III* decision is retroactive, and we need not decide the issue in Applicant's case.

Had Applicant not previously raised his incorrect-parole-advice claim in his -01 habeas application before the *Moussazadeh III* decision was delivered and was raising it for the first time in this -03 habeas application based on the new *Moussazadeh III* decision, then retroactivity would likely be a consideration; however, this is not the case for Applicant. Applicant previously raised his incorrect-parole-advice claim in his -01 habeas application, and the denial of the -01 claim should now be reconsidered by this Court, *sua sponte*, rather than determining whether *Moussazadeh* constitutes new and retroactive law. *See Ex Parte Moussazadeh III*, 361 S.W.3d at 687. Thus, we reconsider, on our own initiative, the incorrect-parole-advice claim raised in Applicant's -01 habeas application and grant relief. Applicant's subsequent -03 habeas application is dismissed.

The judgment in Cause No. 9419321 in the 208th 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: December 14, 2016
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