



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NOS. WR-64,603-03 AND WR-64,603-04

EX PARTE DONNIE EARL PHILLIPS, JR., Applicant

ON APPLICATIONS FOR WRITS OF HABEAS CORPUS
CAUSE NOS. C-371-W012124-1168221-A AND C-371-W012125-1167265-A
IN THE 371ST DISTRICT COURT
FROM TARRANT COUNTY

Per curiam. YEARY, J., concurred.

OPINION

Applicant pleaded guilty to two charges of felony driving while intoxicated in exchange for sentences of six years' imprisonment in each case, to run concurrently. He did not appeal his convictions. Applicant filed these applications for writs of habeas corpus in the county of conviction, and the district clerk forwarded them to this Court. *See* TEX. CODE CRIM. PROC. art. 11.07.

Applicant contends, among other things, that he should not have been convicted and sentenced for felony offenses in both of these cases, because one of the prior convictions used as a jurisdictional prior in both cases was not in fact a conviction for driving while intoxicated, but rather

a conviction for driving while license suspended. Based on the record, it appears that at the time of these offenses, Applicant had only once previously been convicted of driving while intoxicated. Consequently, Applicant should not have received felony punishment for these two charges.

Relief is granted. *Ex parte Rich*, 194 S.W.3d 508 (Tex. Crim. App. 2006). The judgments in cause numbers 1168221W and 1167265D in the 371st District Court of Tarrant County are set aside, and Applicant is remanded to the custody of the Sheriff of Tarrant County to answer the charges as set out in the information and indictment. The trial court shall issue any necessary bench warrant within ten days from the date of this Court's mandate.

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

Delivered: June 29, 2022
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