



## IN THE COURT OF CRIMINAL APPEALS OF TEXAS

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NO. AP-76,378

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EX PARTE DERLIO TREVINO, Applicant

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ON APPLICATION FOR A WRIT OF HABEAS CORPUS  
CAUSE NO. 03-CR-239 IN THE 381<sup>ST</sup> JUDICIAL DISTRICT COURT  
FROM STARR COUNTY

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*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 writ of habeas corpus. *Ex parte Young*, 418 S.W.2d 824, 826 (Tex. Crim. App. 1967). Applicant pleaded guilty to failure to appear and was sentenced to five years' imprisonment, to run consecutively with a ten-year sentence for attempted sexual assault, which had been assessed by a jury after Applicant was tried *in absentia*. He did not appeal his conviction.

Applicant contends that the order "stacking" his sentence in this case on the ten-year sentence in the attempted sexual assault case is improper, because the ten-year sentence in the attempted

sexual assault case was not pronounced in his presence until after he was sentenced in this case. We remanded this application to the trial court to determine whether or not Applicant could have raised this claim on direct appeal. The supplemental record after remand shows that Applicant pleaded guilty in this case pursuant to a plea agreement, and that he waived his right to appeal. Therefore, Applicant could not have challenged the cumulation order by way of direct appeal.

We therefore grant relief and order that the written judgment in this case be corrected to reflect that Applicant's five-year sentence in this cause is to run concurrently with the sentence he received in cause number 01-CR-315 in the 381<sup>st</sup> Judicial District Court of Starr County.

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

Delivered: March 28, 2012  
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