



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. AP-76,762

EX PARTE DALE LINCOLN DUKE, Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. F-9202950-RU IN THE 291ST DISTRICT COURT
FROM DALLAS 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 writ of habeas corpus. *Ex parte Young*, 418 S.W.2d 824, 826 (Tex. Crim. App. 1967). Applicant was convicted of aggravated sexual assault of a child and was sentenced to twenty years' imprisonment. There was no direct appeal.

In his application for a writ of habeas corpus, Applicant contends, *inter alia*, he is actually innocent of the offense. The trial court conducted a live evidentiary hearing in which

it considered the complainant's recantation and newly discovered evidence. Considering all of the evidence before it, the trial court was persuaded the recantation is credible. It finds Applicant is actually innocent, and it recommends granting relief on his actual innocence claim. *See Ex parte Elizondo*, 947 S.W.2d 202 (Tex. Crim. App. 1996). The recommendation is supported by the record provided to this Court, and the trial court's findings on innocence are adopted as this Court's own. Relief is therefore granted.

The judgment in Cause No. F-9202950-RU in the 291st Judicial District Court of Dallas County is set aside. It appears to this Court that Applicant is currently released from custody on bond. The trial court shall issue any necessary bench warrant or order within 10 days after the mandate of this Court issues so that Applicant may answer the indictment.

Delivered: March 28, 2012
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