



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. AP-76,807

EX PARTE JASON CORNELIUS CONNALLY, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 114-1488-10-A IN THE 114TH DISTRICT COURT
FROM SMITH 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 was convicted of aggravated robbery and sentenced to thirty years' imprisonment. The Sixth Court of Appeals affirmed his conviction. *Connally v. State*, 06-11-00067-CR (Tex. App.—Texarkana Aug. 15, 2011) (unpublished).

Applicant contends that his trial counsel rendered ineffective assistance because, *inter alia*, he did not bring the State's belated plea offer of six years' deferred adjudication community supervision to the trial judge's attention at the time Applicant was sentenced on his open plea. The

trial court was not able to obtain a response from trial counsel, but obtained an affidavit from the prosecutor from the punishment hearing. The State agrees that Applicant is entitled to relief.

The trial court has determined that trial counsel performed deficiently during the sentencing hearing after the open plea proceedings and that such deficient performance prejudiced Applicant. Relief is granted. The sentence in Cause No. 114-1488-10-A in the 114th District Court of Smith County is set aside, and Applicant is remanded to the custody of the Sheriff of Smith County for re-sentencing. 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: May 23, 2012
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