



## IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. AP-76,825

EX PARTE LEE ROBERT CARLE, Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS  
CAUSE NO. A-99-0085-1-CR IN THE 36TH DISTRICT COURT  
FROM ARANSAS COUNTY

***Per Curiam.* KELLER, P.J., filed a dissenting opinion in which KEASLER and HERVEY, JJ., joined.**

### 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 attempted capital murder and aggravated robbery, which were alleged as separate counts in a single indictment, and he was sentenced to imprisonment in accordance with a plea agreement. He did not appeal the convictions.

Applicant contends the convictions for both offenses violate the prohibition against double jeopardy. The trial court has entered findings stating the aggravated robbery count was a lesser

included offense of the attempted capital murder count, meaning there cannot be convictions for both under the facts of Applicant's case. See *Blockburger v. United States*, 284 U.S. 299 (1932); *Whalen v. United States*, 445 U.S. 684 (1980); *Littrell v. State*, 271 S.W.3d 273 (Tex. Crim. App. 2008).

Relief is therefore granted. The judgment of conviction as to the aggravated robbery count only in Cause No. A-99-0085-1-CR in the 36th District Court of Aransas County is vacated. The conviction and thirty-year sentence for the attempted capital murder count in the same cause remains intact and is not altered by this opinion.

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

Delivered: June 27, 2012  
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