



## IN THE COURT OF CRIMINAL APPEALS OF TEXAS

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NO. AP-76,903

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**EX PARTE RUBEN MAGANA, Applicant**

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**ON APPLICATION FOR A WRIT OF HABEAS CORPUS  
CAUSE NO. B-07-2141-0-CR-B IN THE 156<sup>TH</sup> DISTRICT COURT  
FROM BEE 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 a writ of habeas corpus. *Ex parte Young*, 418 S.W.2d 824, 826 (Tex. Crim. App. 1967). Applicant was convicted of two counts of driving while intoxicated with a passenger under the age of 15 and sentenced to five years' imprisonment in each case, to run consecutive to two other cases. He did not appeal his conviction.

Applicant contended that he is serving an illegal sentences and that his plea was involuntary because, *inter alia*, trial counsel rendered ineffective assistance of counsel. We remanded this application to the trial court for a response from counsel and findings of fact and conclusions of law.

The trial court did not obtain an affidavit from counsel and did not make findings addressing

Applicant's claims that counsel was ineffective. However, based on the record, the trial court determined that Applicant's sentences are illegal. Applicant is entitled to relief. *Ex Parte Rich*, 194 S.W.3d 508 (Tex. Crim. App. 2006).

Relief is granted. The judgment in Cause No. B-07-2141-0-CR-B in the 156<sup>th</sup> District Court of Bee County is set aside, and Applicant is remanded to the custody of the Sheriff of Bee County to answer the charges as set out in the indictment. 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: October 31, 2012  
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