IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR–57,394-02

EX PARTE WILLIAM KEEN PERRY, Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS FROM HARRIS COUNTY

JOHNSON, J., filed a statement dissenting to denial of relief.

D I S S E N T I N G S T A T E M E N T

Applicant complains that the Board of Pardons and Paroles has imposed, as a condition of his release on parole, condition Z, a special condition that is unconstitutional in that it bars him from entering Harris County "without prior approval."

The state responds that, pursuant to Tex. Gov't Code § 508.181(b), "A parole panel may require a releasee to reside in a county other than the county required under Subsection (a) . . .." Subsection (a) is the default condition, which states that, "[e]xcept as provided by Subsections (b) and (c), a parole panel shall require as a condition of parole or mandatory supervision that the releasee reside in the county" in which the releasee resided at the time of the offense or in which the

offense was committed. Section 508.181(b)(1) allows deviation from the default condition in order "to protect the life or safety of" the victim, the releasee, a witness, or "any other person," while section 508.181(b)(2) allows a deviation to "increase the likelihood of the releasee's successful completion of parole or mandatory supervision."

The state also points out that a parole panel can impose as a condition of parole or mandatory supervision any condition that may be imposed as a condition of community supervision. While both assertions are true, requiring a releasee to reside in a given county is not at all the same as barring a releasee from entering a given county.

"Outlawry" is "the state of being outlawed."[1] "To outlaw" is "to deprive of the benefits and protection of the law."[2] A condition barring a releasee from entering a given county effectively outlaws his entry into that county and thereby runs afoul of the Texas Constitution Article I, § 20, Outlawry or transportation for offense: "No citizen shall be outlawed. No person shall be transported out of the State for any offense committed within the same. . . ." Almost the same language outlawing outlawry appears in Tex. Code Crim. Proc. Art. 1.18.

Applicant further contends that special condition Z is not only unconstitutional but unnecessary because he is also subject to special condition V2, which prohibits any contact with his victim by any means and going "near" his victim's residence, school, or place of employment or business or "near" the school, day-care facility, a similar facility where a dependent child of the

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[1] Webster's Encyclopedic Unabridged Dictionary, Gramercy Books, 1989, p. 1022.

[2] *Ibid*.

victim is in attendance.[3] He has a point. Tex. Gov't Code § 508.181(b) permits a parole panel to require a releasee to live in a county other than the default county only to: "protect the life or safety of" the victim, the releasee, a witness, or "any other person," or "increase the likelihood of the releasee's successful completion of parole or mandatory supervision, ..." Condition V2 appears to handle the protection issues quite nicely, and the parole panel has not explained why it feels that V2 is inadequate. The likelihood that applicant will successfully complete his parole or mandatory supervision is greatly enhanced by being employed. Applicant has filed a sworn affidavit stating that he has been unable to find employment in Montgomery County but has had several offers of employment in Harris County, thus imposition of condition Z impedes applicant's efforts to successfully complete his mandatory supervision. It appears to me that neither Tex. Gov't Code § 508.181(b)(1) or (b)(2) would support imposition of special condition Z, even if condition Z were constitutional.

I would grant relief and strike condition Z as unconstitutional. I respectfully dissent to denial of relief.

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[3] "Near" is a nebulous term that will inevitably be interpreted by the mind of the beholder and therefore make it difficult for the Board to prove a violation. The Board of Pardons and Paroles would be well served by both stating defined distances and editing the boiler-plate conditions to apply to the circumstances at hand. For example, this applicant stands convicted of the unsuccessful solicitation of murder of his estranged wife, thus there is no need for the language about "a close relative of the deceased victim." Likewise, in a case that does not involve a minor child as either the victim or relative of the victim, the language barring a releasee's presence "near" a child's school would be unnecessary.