



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-69,222-03

EX PARTE ANDREW JACKSON BURNS, Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 914428 IN THE 351ST DISTRICT COURT
FROM HARRIS COUNTY

Per curiam. COCHRAN, J., filed a concurring statement, in which KELLER, P.J., HERVEY, and ALCALA, JJ., joined.

ORDER

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 kidnapping and sentenced to thirty-five years' imprisonment. The Fourteenth Court of Appeals affirmed his conviction. *Burns v. State*, No. 14-03-00156-CR (Tex. App.–Houston [14th Dist.] May 18, 2004) (unpublished). During the same trial proceedings, Applicant was convicted in a separate cause of possession of less than one gram of a controlled substance and acquitted of indecency with

a child.

Applicant contends that his trial counsel rendered ineffective assistance because he did not recognize that evidence at trial raised mistake of fact and did not request an appropriate jury instruction that would allow the jury to consider the defense. The trial court agreed with Applicant and recommended that this Court grant relief.

To obtain habeas corpus relief for ineffective assistance of counsel under *Strickland v. Washington*, an applicant must show that (1) counsel's performance was unconstitutionally deficient, and (2) "there is a 'reasonable probability'—one sufficient to undermine confidence in the result—that the outcome would have been different but for his counsel's deficient performance."¹ After a thorough review of the habeas and trial records, we find that Applicant has not proven, by a preponderance of the evidence, that his trial counsel provided constitutionally deficient assistance or that any purported deficiency so prejudiced Applicant that the jury's guilty verdict cannot be relied upon. Accordingly, habeas corpus relief is denied.

Delivered: January 25, 2012
Do Not Publish

¹ *Ex parte Chandler*, 182 S.W.3d 350, 353 (Tex. Crim. App. 2005) (citing *Strickland v. Washington*, 466 U.S. 668, 694 (1984)).