



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-75,293-01

EX PARTE ARMANDO NARRO, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 2009-423,005 IN THE 140TH DISTRICT COURT
FROM LUBBOCK COUNTY**

Per curiam.

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 a writ of habeas corpus. *Ex parte Young*, 418 S.W.2d 824, 826 (Tex. Crim. App. 1967). Applicant was charged with possession with the intent to deliver cocaine. He agreed to stipulate to the charges in the indictment, but, as reflected in the judgment, he was convicted of possession with the intent to deliver methamphetamine. He was sentenced to five years' imprisonment. He did not appeal his conviction.

Applicant contends that trial counsel advised him to plead guilty to possession with the intent to deliver methamphetamine even though he had not been charged with this offense. He also

contends that he is actually innocent and that there is no evidence to support his conviction. The trial court made findings of fact and concluded that trial counsel rendered ineffective assistance and that there is no evidence to support a conviction for possession with the intent to deliver cocaine. After reviewing the record, we conclude that Applicant's claims are without merit. With respect to his ineffective assistance of counsel claim, counsel filed a sworn affidavit and stated that Applicant had previous felony convictions and could have been sentenced as a habitual offender. TEX. PEN. CODE § 12.42(d). Counsel also said that both cocaine and methamphetamine are in Penalty Group 1, TEX. HEALTH & SAFETY CODE § 481.102, and that these offenses have identical punishment ranges. TEX. HEALTH & SAFETY CODE § 481.112. Finally, he said that the indictment could have been amended and that the mistake in the indictment might have been why the State agreed to lower its offer from thirty to five years, the minimum punishment. In his "experience, a minimum offer for a habitual offender with two additional felonies pending is not often made in Lubbock County." Accordingly, relief is denied.

Delivered: November 9, 2011
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