



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-78,158-01

EX PARTE JAMES HOWARD DAVIS, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 09-0093X IN THE 71ST DISTRICT COURT
FROM HARRISON 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 convicted of driving while intoxicated and sentenced to eight years, which was probated. His probation was later revoked, and he was sentenced to four years' imprisonment. He did not appeal his conviction.

Applicant contends that from July 29, 2009 to March 1, 2010, he completed a treatment program at a substance abuse felony punishment facility operated by the Texas Department of Criminal Justice. He contends, however, that he was not credited with this time. In its response, the State contends that Article 42.03, § 2(a)(2) of the Code of Criminal Procedure, which Applicant

relies on, applies to persons placed on deferred adjudication probation, not to persons whose sentences have been probated. We dismiss this application. The appropriate remedy is a motion for judgment *nunc pro tunc* and, if the trial court does not respond, an application for a writ of mandamus. *Ex parte Ybarra*, 149 S.W.3d 147 (Tex. Crim. App. 2004). In dismissing this application, we note that persons whose sentences are probated may be entitled to pre-sentence credit for time spent in a substance abuse felony punishment facility. TEX. CODE CRIM. PROC. art. 42.12, § 23(b).

Filed: August 22, 2012
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