



## IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-13,685-07

**EX PARTE ANTHONY RAY MASSINGILL, Applicant**

ON APPLICATION FOR A WRIT OF HABEAS CORPUS  
CAUSE NO. 79-13005-I  
IN THE CRIMINAL DISTRICT COURT NUMBER TWO FROM DALLAS COUNTY

*Per curiam.* KEASLER, J., not participating.

### 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 aggravated rape and sentenced to life imprisonment. The Fifth Court of Appeals affirmed his conviction. *Massingill v. State*, No. 05-81-00395-CR (Tex. App.–Dallas Feb. 24, 1982)(not designated for publication).

Applicant contends that false testimony was presented at his punishment hearing. In order to obtain relief, Applicant must show that the testimony in question was false and that it was material to his punishment. *Ex parte Weinstein*, 421 S.W.3d 656 (Tex. Crim. App. 2014). Applicant's claims

are based on newly discovered DNA evidence of his innocence in two unrelated cases. Testimony regarding Applicant's guilt in those unrelated cases was presented at the punishment phase of this trial. The DNA evidence now shows that the testimony presented was false, although no one knew that it was false when it was presented to the trial court.

The trial court has determined that the testimony presented was false, and that it was material to the court's determination of Applicant's punishment. We agree. Relief is granted. The sentence in Cause No. 79-13005-I in Criminal District Court Number Two of Dallas County is set aside, and Applicant is remanded to the custody of the Sheriff of Dallas County for a new punishment hearing. 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: September 17, 2014  
Do not publish