



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-16,370-02

EX PARTE WILL DONNELL SIMMONS, Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. W91-00848-I(A) IN CRIMINAL DISTRICT COURT NO. 2
FROM DALLAS 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 aggravated sexual assault and sentenced to life imprisonment. His sentence was ordered to run consecutively with a forty-year sentence for aggravated robbery. The Fifth Court of Appeals affirmed his conviction. *Simmons v. State*, No. 05-91-00503-CR (Tex. App.—Dallas 1992, pet. ref'd).

In a single ground, Applicant contends that the cumulation portion of the judgment in his

case is improper.¹ The trial court made findings of fact and conclusions of law and recommended that we delete the cumulation portion of the judgment. The trial court relied in part on *LaPorte v. State*, 840 S.W.2d 412 (Tex. Crim. App. 1992). There we said that an “improper cumulation order is, in essence, a void sentence, and such error cannot be waived. A defect which renders a sentence void may be raised at any time.” *Id.* at 415.

We order that this application be filed and set for submission. The parties shall brief whether Applicant’s sentence was improperly cumulated, his sentence is “void” or illegal, and he may raise his claim for the first time in an application for a writ of habeas. *See Ex parte Townsend*, 137 S.W.3d 79 (Tex. Crim. App. 2004).

The trial court shall determine whether Applicant is indigent. If Applicant is indigent and desires to be represented by counsel, the trial court shall appoint an attorney to represent Applicant. TEX. CODE CRIM. PROC. art 26.04. The trial court shall send to this Court, within 60 days of the date of this order, a supplemental transcript containing either the order appointing counsel or a statement that Applicant is not indigent. All briefs shall be filed with this Court within 90 days of the date of this order.

Filed: May 14, 14
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¹On the 11.07 form, he writes that his sentence is “void” because the trial court entered an improper cumulation order.