



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NOS. WR-59,591-03 & WR-59,591-04

EX PARTE MICHAEL D. PHILLIPS, Applicant

**ON APPLICATIONS FOR WRITS OF HABEAS CORPUS
CAUSE NOS. W90-34845-J & W04-71181-J
IN THE CRIMINAL DISTRICT COURT NUMBER THREE
FROM DALLAS COUNTY**

Per curiam.

O P I N I O N

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 sexual assault and sentenced to twelve years' imprisonment in 1990. He was also convicted of failure to register as a sex offender and sentenced to 180 days in state jail in 2004. He did not appeal the convictions.

Applicant contends that he has newly discovered evidence that he is actually innocent of the sexual assault and because he is actually innocent of the cause which would require him to register

as a sex offender, he had no duty to register and is actually innocent of that offense as well. The trial court has determined that no rational jury would have convicted applicant in light of the new evidence, which was previously unavailable to applicant. The evidence, obtained pursuant to post-conviction DNA testing and investigation, indicates that it was another individual, and not applicant, who committed the sexual assault. The State and the trial court both recommend granting relief. Applicant is entitled to relief. *Ex parte Elizondo*, 947 S.W.2d 202, 209 (Tex. Crim. App. 1996).

Relief is granted. The judgments in Cause Nos. 90-34845-J and 04-71181-J in Criminal District Court Number 3 of Dallas County are set aside, and applicant is remanded to the custody of the Sheriff of Dallas County to answer the charges against him. 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 Parole Division.

Delivered: August 6, 2014
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