



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-76,050-01

EX PARTE JAMES PEMBERTON STEWART IV, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 2007CRN11-D1 IN THE 49TH DISTRICT COURT
FROM WEBB COUNTY**

Per curiam.

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 murder and sentenced to fifty years' imprisonment. The Fourth Court of Appeals affirmed his conviction. *Stewart v. State*, No. 04-08-00274-CR (Tex. App.—San Antonio Jul. 22, 2009) (unpublished).

Applicant contends, among other things, that his trial counsel rendered ineffective assistance at the punishment phase of trial. He alleges that counsel did not rebut claims that Applicant had gang tattoos, and did not present mitigation witnesses.

After a live hearing, the trial court determined that trial counsel's performance was deficient in that counsel did not rebut the state's gang affiliation evidence, did not present mitigation evidence, and that such deficient performance prejudiced Applicant. Relief is granted. The sentence in Cause No. 2007CRN11-D1 in the 49th District Court of Webb County is set aside, and Applicant is remanded to the custody of the Sheriff of Webb County for a new punishment hearing. Applicant's remaining claims challenging the validity of the conviction are denied. 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: June 11, 2014
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