



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-78,242-02

EX PARTE CURTIS DEWAYNE CRISS, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. W07-49170-Q IN THE 204TH DISTRICT COURT
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 capital murder and automatically sentenced to life imprisonment without the possibility of parole in April 2008. The Fifth Court of Appeals affirmed the conviction. *Criss v. State*, No. 05-08-00491-CR (Tex. App.–Dallas June 30, 2010).

Applicant contends that his sentence of automatic life without parole violates the Eighth Amendment of the U.S. Constitution because he was a juvenile at the time of the offense. *Miller v.*

Alabama, 132 S.Ct. 2455 (2012). This Court recently held that *Miller* applies retroactively in Texas. *Ex parte Maxwell*, AP-74,964 (Tex. Crim. App. Mar. 12, 2014)(designated for publication).

Applicant was seventeen years old at the time of the offense. After being found guilty by a jury, he was automatically sentenced to life in prison without the possibility of parole under the law at the time. Tex. Penal Code §12.31(a)(2007).

Both the State and the trial court recommend granting relief. That recommendation is supported by the record. Applicant is entitled to relief.

Relief is granted. The sentence in Cause No. 07-49170-Q in the 204th District Court of Dallas County is set aside, and Applicant is remanded to the custody of the Sheriff of Dallas County for a new punishment hearing to decide between a sentence of life with parole and life without parole.

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: December 17, 2014
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