



## IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-81,623-01

**EX PARTE KIELLE DROMONE MCNEAL, Applicant**

ON APPLICATION FOR A WRIT OF HABEAS CORPUS  
CAUSE NO. F08-47896-L IN THE CRIMINAL DISTRICT COURT NO. 5  
FROM DALLAS 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 Fifth Court of Appeals affirmed his conviction. *McNeal v. State*, No. 05-10-00181-CR (Tex. App. – Dallas, June 17, 2011).

Applicant contends, among other things, that his trial counsel rendered ineffective assistance because counsel failed to pursue a defense of accident or seek a lesser included offense instruction. Applicant alleges that he maintained that the shooting was accidental, but that trial counsel insisted

on pursuing a theory of self defense, which was essentially negated when the jury received an instruction pursuant to Section 9.31(b) of the Texas Penal Code.

The trial court has determined that trial counsel's performance was deficient in that counsel failed to adequately explain the applicable law to Applicant, failed to reasonably consult with Applicant regarding his options, and pursued an unreasonable defensive strategy. The trial court also finds that such deficient performance prejudiced Applicant. Relief is granted. The judgment in Cause No. F08-47896-L in the Criminal District Court No. 5 of Dallas County is set aside, and Applicant is remanded to the custody of the Sheriff of Dallas County. 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: October 15, 2014  
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