



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-82,390-01

EX PARTE ANDREW EARL WHEELER, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 1428895-A IN THE 248TH DISTRICT COURT
FROM HARRIS 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 possessing cocaine and was sentenced to imprisonment. There was no direct appeal.

No testing had been done on the alleged drugs at the time of Applicant's guilty plea. Since the plea, testing was completed and no cocaine was found. The trial court, with the State's agreement, recommends granting relief. According to this Court's decision in *Ex parte Mable*, 443 S.W.3d 129 (Tex. Crim. App. 2014), under these circumstances, Applicant's guilty plea is considered involuntary. Even so, the lab report in the habeas record indicates that, although the drug

evidence seized and tested was not cocaine as alleged in the information (indictment was waived), the evidence was approximately 1.08 grams of methamphetamine and approximately 1.0 gram of dihydrocodeinone.

The trial court's recommendation is supported by the record and applicable law. Relief is granted. *See Ex parte Mable, supra*. The judgment in Cause No. 142889501010 in the 248th District Court of Harris County is set aside, and Applicant is remanded to the custody of the Sheriff of Harris County to answer the charge. 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: January 14, 2015
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