



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-64,876-06

EX PARTE ERIC ANDIKA, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 49026-B IN THE 78TH DISTRICT COURT
FROM WICHITA 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 unlawful use of a criminal instrument and sentenced to three years' imprisonment. *See* TEX. PENAL CODE § 16.01. According to the indictment, Applicant possessed a digging tool while incarcerated with the intent to use it for escape. According to the judgment, the offense was a third-degree felony. Applicant did not appeal the conviction.

In his habeas application, Applicant complains that the offense for which he was convicted under the plea agreement was not a third-degree felony but was a state-jail felony, so his three-year sentence is not lawful. The State agrees that the offense is not a third-degree felony, and the trial court recommends granting habeas relief. This Court agrees. *See Ex parte Rich*, 194 S.W.3d 508 (Tex. Crim. App. 2006); *Shannon v. State*, 708 S.W.2d 850 (Tex. Crim. App. 1986).

Relief is granted. The judgment in Cause No. 49,026-B in the 78th District Court of Wichita County is set aside. Applicant is remanded to the custody of the Sheriff of Wichita County to answer the charges as set out in the indictment. 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: March 2, 2016
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