



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-66,501-02

EX PARTE RANDY WILEY, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 15-03-03171(1) IN THE 221ST DISTRICT COURT
FROM MONTGOMERY 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 pleaded guilty to possession with intent to deliver a controlled substance, to-wit: heroin in an amount of one gram or more but less than four grams, and was sentenced to eleven years' imprisonment. He did not appeal his conviction.

Applicant contends that his plea was involuntary because after he had pleaded guilty the evidence in this case was tested and the heroin was found to weigh less than one gram. Possession

with intent to deliver less than one gram of heroin is a state jail felony, whereas possession with intent to deliver one gram or more but less than four grams of heroin is a second degree felony.

The parties have entered agreed findings of fact and conclusions of law, and the trial court has determined that Applicant's decision to plead guilty in this case was not a voluntary and intelligent choice. Applicant is entitled to relief. *Ex parte Mable*, 443 S.W. 3d 129 (Tex. Crim. App. 2014).

Relief is granted. The judgment in Cause No. 15-03-03171-CR in the 221st District Court of Montgomery County is set aside, and Applicant is remanded to the custody of the Sheriff of Montgomery 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: April 6, 2016
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