



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NOS. WR-83,764-01 and -02

EX PARTE KELVIN GRANT ALEXANDER, JR., Applicant

ON APPLICATIONS FOR A WRIT OF HABEAS CORPUS
CAUSE NOS. 07-02-01683-CR (1) AND 07-08-08026-CR (1) IN THE 359th 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 these applications for a writ of habeas corpus. *Ex parte Young*, 418 S.W.2d 824, 826 (Tex. Crim. App. 1967). Applicant was convicted of aggravated robbery and possession of a controlled substance and he was sentenced to twenty-seven years' and five years' imprisonment, respectively. The Ninth Court of Appeals affirmed his convictions. *Alexander v. State*, Nos. 09-08-00372-CR and 09-08-00373-CR (Tex. App.—Beaumont December 9, 2009) (not designated for publication).

Applicant contends, *inter alia*, that his trial counsel rendered ineffective assistance because

he failed to object to the trial court's order to cumulate the sentences in these cases.

The trial court, based upon the record and an affidavit obtained from trial counsel, recommends granting relief. Specifically, the trial court finds that, because the Applicant's convictions did arise out of the same criminal episode, the cumulation order violated TEX. PENAL CODE § 3.03 (a).¹ The trial court also finds that counsel has provided no strategic basis for his failure to notify the trial court that the entry of the cumulation order would be unlawful. We agree.

The cumulation orders included on the judgments in Cause No. 07-02-01686-CR and 07-08-08026-CR in the 359th District Court of Montgomery County are deleted and Applicant's sentences are ordered to run concurrently.

Copies of this opinion shall be sent to the Texas Department of Criminal Justice-Correctional Institutions Division and Pardons and Paroles Division.

Delivered: May 4, 2016
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¹ Subsection (a) of the statute states:

When the accused is found guilty of more than one offense arising out of the same criminal episode prosecuted in a single criminal action, a sentence for each offense for which he has been found guilty shall be pronounced. Except as provided by Subsection (b), the sentences shall run concurrently.