



## IN THE COURT OF CRIMINAL APPEALS OF TEXAS

**NO. WR-83,989-03**

**EX PARTE MILTON WAYNE KAY, Applicant**

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS  
CAUSE NO. D120519CR IN THE 260TH DISTRICT COURT  
FROM ORANGE 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 driving while intoxicated, enhanced with a prior felony conviction, and sentenced to nineteen years' imprisonment. The First Court of Appeals affirmed his conviction. *Kay v. State*, No. 01-13-00595-CR (Tex. App.—Houston [1<sup>st</sup> Dist.] July 24, 2014) (not designated for publication).

Applicant contends that his trial counsel rendered ineffective assistance because trial counsel failed to inform him of a seven-year plea offer. The trial court has determined that trial counsel's

performance was deficient and that such deficient performance prejudiced Applicant. *See Missouri v. Frye*, \_\_\_ U.S. \_\_\_, 132 S.Ct. 1399 (2012). The trial court recommends granting habeas relief. The findings and recommendation are supported by the habeas record.

Relief is granted. The judgment in Cause No. D120519-R in the 260th District Court of Orange County is set aside, and Applicant is remanded to the custody of the Sheriff of Orange 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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