



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-85,231-01

EX PARTE MICHELLE NICOLE TUTTLE, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 15-07-07758-CR(1) IN THE 410TH 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 of methamphetamine in an amount of one gram or more but less than four grams, and was sentenced to three years' imprisonment. She did not appeal her conviction.

Applicant contends that her plea was involuntary because after she had pleaded guilty the evidence in this case was tested and the methamphetamine was found to weigh less than one gram. Possession of methamphetamine in an amount of less than one gram is a state jail felony, whereas

possession of methamphetamine in an amount of one gram or more but less than four grams is a second degree felony. *See* TEX. HEALTH & SAFETY CODE §§ 481.115(b), (c).

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. 15-07-07758-CR in the 410th 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: June 29, 2016
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