



## IN THE COURT OF CRIMINAL APPEALS OF TEXAS

**NO. WR-85,543-01**

**EX PARTE WILLIAM KEITH PAYNE, Applicant**

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS  
CAUSE NO. 15-11-11927-CR(1) IN THE 435<sup>th</sup> 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 was convicted of possession of a controlled substance and sentenced to two years' imprisonment. He did not appeal his conviction.

Applicant contends that he is not guilty of the offense in this case because subsequent drug testing shows the amount of drugs he possessed is less than the amount alleged in the information. Specifically, Applicant contends he was charged with, and pled guilty to, a third degree felony and subsequent testing shows he had an amount of narcotics that would only support a state jail felony

conviction.

Based on the record, the trial court determined subsequent testing did show the amount of narcotics seized in Applicant's case was less than that alleged in the indictment. The trial court also concluded that, because Applicant was not aware of the laboratory results, his plea in this case was unknowing and involuntary. While Applicant's ground for relief is inarticulately pled, it is clear from the record that he is entitled to relief. *Ex parte Mable*, 443 S.W.3d 129 (Tex. Crim. App. 2014).

Relief is granted. The judgment in Cause No. 15-11-11927-CR in the 435<sup>th</sup> 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: August 24, 2016

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