



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-85,601-01

EX PARTE JOEY DIAZ GONZALEZ, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 1495567-A IN THE 248TH DISTRICT COURT
FROM HARRIS 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 a controlled substance in Penalty Group 2 in an amount of less than one gram under Section 481.116(b) of the Texas Health and Safety Code, and was sentenced to ten months' state jail imprisonment. He did not appeal his conviction.

Applicant contends that his plea was involuntary and that his conviction violates due process, because the substance possessed by Applicant had been approved by the Federal Drug

Administration, and therefore he could not be prosecuted for possessing it under Section 481.103(d) of the Texas Health and Safety Code. Apparently, none of the parties was aware at the time of Applicant's plea that subsection (d) had been added to Section 481.103 of the Texas Health and Safety Code, and that Applicant could not be prosecuted for possession of a controlled substance under Section 481.116 of the Texas Health and Safety Code for possessing the substance in question. The parties agree that Applicant is entitled to relief because he did not possess an understanding of the law in relation to the facts when he entered his plea in this case. *Ex parte Mable*, 443 S.W.3d 129, 131 (Tex. Crim. App. 2014).

Relief is granted. The judgment in Cause No. 149556701010 in the 248th District Court of Harris County is set aside, and Applicant is remanded to the custody of the Sheriff of Harris County to answer the charges against him. 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: September 21, 2016
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