



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NOS. WR-55,332-02 & WR-55,332-03

EX PARTE MARLON LAMON HOODYE, Applicant

ON APPLICATIONS FOR WRITS OF HABEAS CORPUS
CAUSE NOS. CR-00-201-A & CR-00-532-A
IN THE 22ND DISTRICT COURT FROM HAYS 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 writs of habeas corpus. *Ex parte Young*, 418 S.W.2d 824, 826 (Tex. Crim. App. 1967). Applicant was convicted of assault on a public servant and burglary of a habitation and sentenced to ten years' imprisonment for each cause. The sentences were ordered to run consecutively to another sentence. He did not appeal his convictions.

Applicant contends that his trial counsel rendered ineffective assistance because he did not object to a stacking order entered in violation of Texas Penal Code, § 3.03. The trial court has

determined that trial counsel was ineffective in that counsel failed to object to or appeal the order that this sentence would run consecutive to another sentence after he had already begun serving these sentences on probation. *See Ex parte Barley*, 842 S.W.2d 694 (Tex. Crim. App. 1992); *Ex parte Townsend*, 137 S.W.3d 79, 81 (Tex. Crim. App. 2004). The stacking order violated § 3.03, and without that order, these sentences would have discharged while serving the underlying sentence.

We find, therefore, that applicant is entitled to immediate release from the sentences in Case Nos. CR-00-201 and CR-00-532 from the 22nd Judicial District Court of Hays County. The Texas Department of Criminal Justice shall immediately release Applicant unless he is also confined for some other sentence.

A copy of this opinion shall be sent to the Texas Department of Criminal Justice.

Delivered: April 26, 2017
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