



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-85,161-02

EX PARTE ERNEST LEE SONNIER, Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 453191-A IN THE 209TH DISTRICT COURT
FROM HARRIS COUNTY

Per curiam. KELLER, P.J. filed a dissenting opinion in which KEASLER, J. and HERVEY, J. joined.

O P I N I O N

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 writ of habeas corpus. *Ex parte Young*, 418 S.W.2d 824, 826 (Tex. Crim. App. 1967). Applicant was convicted of aggravated kidnapping and sentenced to life imprisonment. The First Court of Appeals affirmed his conviction. *Sonnier v. State*, 753 S.W.2d 464 (Tex. App.–Houston [1st Dist], 1988, *pet. ref'd*).

Applicant contends that he has newly discovered evidence that he is actually innocent of this offense, that his conviction is based on false testimony, and that he is entitled to habeas relief based

on new scientific evidence not available at the time of his trial.

The Court does not believe that Applicant has met his burden to obtain relief based on actual innocence. However, he has shown that had the results of new mitochondrial DNA testing been presented at trial, on the preponderance of the evidence he would not have been convicted for this offense. TEX. CODE CRIM. PROC. Art. 11.073.

Relief is granted. The judgment in Cause No. 453191 in the 209th District Court of Harris County is set aside, and Applicant is remanded to the custody of the Sheriff of Harris County to answer the charge 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 Parole Division.

Delivered: October 4, 2017
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