



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-85,310-01

EX PARTE THOMAS LITTLE, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 14-0698-CR-C-A IN THE 25TH DISTRICT COURT
FROM GUADALUPE COUNTY**

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

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 two counts of burglary of a habitation and sentenced to concurrent terms of twenty years' imprisonment. The Fourth Court of Appeals affirmed his convictions. *Little v. State*, No. 04-14-00618-CR (Tex. App.—San Antonio Oct. 7, 2015).

The State alleged in Count One of the indictment that Applicant entered the victim's habitation without consent and with intent to kidnap a child in her custody, which is a first-degree

felony. It alleged in Count Two that he entered the victim's habitation without consent and with intent to commit theft, which is a second-degree felony. The jury convicted Applicant of both counts and assessed two twenty-year sentences. Applicant contends, *inter alia*, that his two convictions violate double jeopardy. *See Ex parte Cavazos*, 203 S.W.3d 333, 337 (Tex. Crim. App. 2006).

This Court has held that burglary is a crime against property. *Id.* “[W]hen a burglary is committed, the harm results from the entry itself. [] The offense is complete once the unlawful entry is made, without regard to whether the intended theft or felony is also completed.” *Id.* Thus, this Court held, “[T]he allowable unit of prosecution in a burglary is the unlawful entry. [A habeas applicant's] convictions violate double jeopardy [when] he was punished multiple times for a single unlawful entry.” *Id.*

Applicant is entitled to habeas relief. The conviction for burglary of a habitation in count two of the judgment in cause no. 14-0698-CR-C from the 25th District Court of Guadalupe County is vacated. The conviction for burglary of a habitation in count one of the judgment remains unaffected.

Copies of this opinion shall be sent to the Texas Department of Criminal Justice-Correctional Institutions Division and Pardons and Paroles Division.

Delivered: April 12, 2017
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