



## IN THE COURT OF CRIMINAL APPEALS OF TEXAS

**NO. WR-85,337-01**

**EX PARTE MAURICE SPAIN, Applicant**

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS  
CAUSE NO. 731290-A IN THE 339<sup>TH</sup> DISTRICT COURT  
FROM HARRIS COUNTY**

*Per curiam.* YEARY, J., concurred.

### O P I N I O N

This is an application for a post-conviction writ of habeas corpus filed by Maurice Spain, applicant, pursuant to the provisions in Article 11.07 of the Texas Code of Criminal Procedure. *See* TEX. CODE CRIM. PROC. art. 11.07. This Court filed and set this case for submission in November 2016. *See Ex parte Spain*, No. WR-85,337-01, 2016 WL 6519245 (Tex. Crim. App. Nov. 2, 2016). For the reasons explained below, we now conclude that the application is moot and must be dismissed.

The record reflects that, in 1997, applicant was convicted of tampering with physical

evidence and sentenced to twenty-five years' imprisonment. In 2007, while he was out of custody on supervised release for that offense, he was convicted of possession of a controlled substance with the intent to deliver, and he received a sentence of ten years' imprisonment for that offense. Upon applicant's conviction for the drug offense, his supervised release for the evidence-tampering conviction was revoked. Applicant thus commenced serving his sentences for both offenses concurrently.

In March 2016, applicant filed the instant application for a post-conviction writ of habeas corpus in which he challenged the Board of Pardons and Paroles's decision to deny him release to mandatory supervision on his evidence-tampering conviction. In his application, applicant notes that, based on the date that he committed the offense, his evidence-tampering conviction is subject to the former mandatory-supervision statute that entitles an inmate to release based on a calculation of his "flat time" plus his good-conduct time.<sup>1</sup> His 2007 drug conviction, on the other hand, is subject to the current statutory scheme that makes his release to supervision contingent upon a discretionary determination by the Board.<sup>2</sup> Applicant alleges that his due-process rights were violated by the Board's refusal to release him to mandatory supervision on his evidence-tampering conviction once he became eligible for release under the terms of the applicable statute. The record reflects that the basis for the Board's decision not to release applicant to mandatory supervision on the

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<sup>1</sup> See TEX. CODE CRIM. PROC. art. 42.18, § 8(c) (West 1996), *repealed by* Act of May 8, 1997, 75th Leg., R.S., ch. 165, § 12.22, 1997 Tex. Gen. Laws 327, 443.

<sup>2</sup> See TEX. GOV'T CODE §§ 508.147(a), 508.149(b).

evidence-tampering case was that he had been denied discretionary mandatory supervision release on his drug conviction and thus he was not yet eligible for actual release from custody. In an affidavit in response to applicant's application, a representative from TDCJ explained that, "in order to be released to mandatory supervision, an offender must be eligible to be released on all offenses." The affidavit explained that "applicant will be released to mandatory supervision [on the evidence-tampering conviction] when he is approved for either parole or discretionary mandatory supervision by the Board on [the drug-possession case] or when he discharges" his sentence for the drug offense.

The habeas court made findings of fact and conclusions of law in which it found TDCJ's affidavit credible and concluded that applicant had "failed to demonstrate that . . . he is being improperly confined."

In November 2016, this Court issued an order filing and setting applicant's case to "examine the legality of the Board's policy of not 'releasing' a prisoner to mandatory supervision on one concurrent sentence until the prisoner is 'eligible for release' on all concurrent sentences." *See Spain*, 2016 WL 6519245, at \*1. We invited the parties and TDCJ to brief the issue.

In January 2017, the habeas court made revised findings of fact and conclusions of law indicating that applicant has been released from custody and recommending that the application be dismissed as moot. The basis for the habeas court's determination is a new affidavit from TDCJ program supervisor Charley Valdez in which Valdez states that

applicant was released from TDCJ custody to supervision on both offenses on December 15, 2016. After finding Valdez's affidavit credible, the habeas court determined that "the applicant's writ complaint of being illegally restrained because he was denied mandatory supervision is now moot."

We agree with the habeas court's determination that applicant's claim should be dismissed in light of his release from custody. Given the nature of applicant's claim, which relates to the legality of the Board's refusal to release him to mandatory supervision on his evidence-tampering conviction during the time that he was being held in custody on his drug conviction, that claim is rendered moot as a result of his release to supervision. We, therefore, order the application dismissed.

Delivered: May 17, 2017

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