



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-86,994-01

EX PARTE CALEB AARON UNRUH, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. W-25661-B-1 IN THE 181ST DISTRICT COURT
FROM RANDALL 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 was convicted of delivery of marihuana and sentenced to six years' imprisonment. He did not appeal his conviction.

Applicant contends that his sentence is unlawful. The State agrees. Although there are no findings from the trial court, the habeas record shows that relief should be granted.

Applicant was charged with delivering between 1/4 ounce to five pounds of marihuana, which is a state-jail felony. TEX. HEALTH & SAFETY CODE 481.120(b)(3). The delivery was alleged

to have been within 300 feet of a “Mr. Gattis” that the State claimed was a video arcade facility, which if true, made the offense punishable as a third-degree felony. TEX. HEALTH & SAFETY CODE 481.134(a)(6), (b)(2). Applicant accepted a five-year deferred-adjudication probation plea-agreement. During the deferred period, however, Applicant committed numerous violations, so the deferred-probation was revoked, and an agreed six-year sentence was assessed.

Lab testing on the substance Applicant delivered reveals that it was marihuana, but the net weight was 6.95 grams (+/- 0.03 grams), which equals 0.24 ounces. That amount is below the threshold for the state-jail felony amount. TEX. HEALTH & SAFETY CODE 481.120(b)(3). Thus, Applicant’s six-year sentence is not authorized by law. *Mizell v. State*, 119 S.W.3d 804, 806 (Tex. Crim. App. 2003).

Claims involving a sentence not authorized by law may be raised in habeas corpus. *Ex parte Rich*, 194 S.W.3d 508 (Tex. Crim. App. 2006). “[T]he proper remedy is to allow Applicant to withdraw his plea and remand the case to the trial court, putting both parties back in their original positions before they entered into the plea bargain.” *Id.* at 514-15.

Relief is granted. The judgment in Cause No. 25661B in the 181st District Court of Randall County is set aside, and Applicant is remanded to the custody of the Sheriff of Randall County to answer the charges as set out in the indictment. 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 13, 2017
Do not publish