



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-86,544-01

EX PARTE JERRY WAYNE HOGG, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 14-7444-A IN THE 106th DISTRICT COURT
FROM DAWSON 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 driving while intoxicated and sentenced to ten years' imprisonment. The Eleventh Court of Appeals affirmed his conviction. *Hogg v. State*, No. 11-16-00144-CR (Tex. App.—Eastland June 16, 2016) (not designated for publication).

Applicant contends that his trial counsel rendered ineffective assistance because, among other things, she failed to investigate, erred in advising Applicant to turn down the State's plea offer, and,

through her actions and inactions, coerced Applicant into entering a plea of guilty. We remanded this application to the trial court with an order to conduct a live evidentiary hearing and make findings of fact and conclusions of law concerning Applicant's claims for relief in this case.

Based upon the evidence submitted at the evidentiary hearing, the trial court has entered findings of fact and conclusions of law that Applicant's allegations are true and that his plea in this case was involuntary due to the ineffective assistance of his counsel. Applicant is entitled to relief. *See Ex parte Moody*, 991 S.W.2d 856, 857-58 (Tex. Crim. App. 1999), citing *Hill v. Lockhart*, 474 U.S. 52, 59, 106 S.Ct. 366, 370, 88 L.Ed. 2d 203 (1985).

Relief is granted. The judgment in Cause No. 14-7444 in the 106th District Court of Dawson County is set aside, and Applicant is remanded to the custody of the Sheriff of Dawson 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.

Also, as part of our remand order, we instructed the trial court to make findings of fact and conclusions of law as to whether counsel made a material misrepresentation in her affidavit regarding whether a plea offer was accepted in this case only to be undone by the district attorney. Based upon the evidence presented at the evidentiary hearing, the trial court has entered findings of fact and conclusions of law that counsel did make a material misrepresentation in her affidavit.

Copies of this opinion shall be sent to the Texas Department of Criminal Justice—Correctional Institutions Division and Pardons and Paroles Division. Copies of this opinion shall also be sent to the State Bar of Texas' Office of the Chief Disciplinary Counsel.