



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NOS. WR-87,705-01 AND WR-87,705-02

EX PARTE ANTHONY DAMEN CALLAWAY, Applicant

**ON APPLICATIONS FOR WRITS OF HABEAS CORPUS
CAUSE NOS. W199-80779-04-HC AND W199-80780-04-HC
IN THE 219TH DISTRICT COURT
FROM COLLIN 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 these applications for writs of habeas corpus. *Ex parte Young*, 418 S.W.2d 824, 826 (Tex. Crim. App. 1967). Applicant pleaded guilty to two charges of failure to register as a sex offender in exchange for six years' community supervision. His community supervision was later revoked and he was sentenced to three years' imprisonment for each charge, to run concurrently. He did not appeal his convictions.

Applicant contends, among other things, that his trial counsel rendered ineffective assistance resulting in unknowing and involuntary pleas, because trial counsel failed to advise Applicant that

the indictments charged the incorrect degree of offense, and that the sentences in exchange for which he pleaded guilty were unauthorized. Specifically, Applicant alleges that the offense requiring him to register as a sex offender was a juvenile adjudication, rather than a "sexually violent" felony conviction. Applicant's failures to comply with sex offender registration conditions should have been charged under former Article 62.10(b)(1)(2004), and should have been state jail felonies. The indictments in these cases charged Applicant with failure to comply with sex offender registration requirements under former Article 62.10(b)(2) (2004), third degree felonies. The indictments also alleged two prior, non-sequential felony convictions for enhancement purposes. However, because the primary offenses were state jail felonies rather than third degree felonies, punishment could not have been enhanced using prior non-sequential, non-state-jail felony convictions.

The trial court has determined that Applicant's sentences were in fact unauthorized. We find that trial counsel's performance was deficient in that trial counsel failed to advise Applicant of the correct punishment range for these offenses and allowed him to plead guilty in exchange for unauthorized sentences, and that such deficient performance prejudiced Applicant. Relief is granted. The judgments in Cause Nos. 199-80779-04 and 199-80780-04 in the 219th District Court of Collin County are set aside, and Applicant is remanded to the custody of the Sheriff of Collin County to answer the charges as set out in the indictments. 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: October 31, 2018
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