



## IN THE COURT OF CRIMINAL APPEALS OF TEXAS

**NO. WR-88,327-01**

**EX PARTE KEITH DELAWRENCE WELLS, Applicant**

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS  
CAUSE NO. 32609-A IN THE 18TH DISTRICT COURT  
FROM JOHNSON 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 sexual assault of a child and sentenced to four years' imprisonment.

In 1997, Applicant, then age 17, admitted that he put his penis into the mouth of the victim, who was then age 14. He was two years and eleven months older than the victim. He was indicted for sexual assault of a child, which alleged the above act and three other sexual acts in separate counts. He pled guilty to count four under a plea agreement for five years of deferred-adjudication

probation. The State moved to revoke the deferred-adjudication probation in its last month. Applicant pled true, and a four-year sentence was assessed. There was no direct appeal, and this is the first habeas application. The four-year sentence has discharged, but Applicant is required to register as a sex offender, so the habeas claims may be reviewed. *Ex parte Harrington*, 310 S.W.3d 452, 457 (Tex. Crim. App. 2010).

Applicant contends, *inter alia*, that his guilty plea was involuntary due to the ineffective assistance of his trial counsel. Because Applicant was within three years of age of the victim, he had an affirmative defense to the prosecution. TEX. PENAL CODE § 22.011(e) (eff. Sep. 1, 1994). Prior to the statute's amendment, the affirmative defense was two years. The trial court, with the State's agreement, recommends granting habeas relief as to the involuntary guilty plea claim based on ineffective assistance. The findings and recommendation are supported by the habeas record.

Relief is granted on Applicant's claims of involuntary plea and ineffective assistance; his remaining claims are denied. The judgment in Cause No. 32609 in the 18th District Court of Johnson County is set aside. Applicant is ordered to answer the charges as set out in the indictment, and the trial court shall issue any necessary orders 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: May 16, 2018  
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