



## IN THE COURT OF CRIMINAL APPEALS OF TEXAS

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NO. WR-88,877-01

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**EX PARTE ROSA ELENA ARIZMENDI, Applicant**

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**ON APPLICATION FOR A WRIT OF HABEAS CORPUS  
CAUSE NO. 068589-01-E-WR IN THE 108<sup>TH</sup> DISTRICT COURT  
FROM POTTER COUNTY**

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*Per curiam.* YEARY, J., dissents.

### 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 possession with the intent to deliver a controlled substance and sentenced to twenty-five years' imprisonment. The trial court granted Applicant's motion for new trial. The State appealed and the Seventh Court of Appeals affirmed the trial court's decision. *State v. Arizmendi*, 07-15-00238-CR (Tex. App.—Amarillo May 19, 2016)(not designated for publication). The State filed a petition for discretionary review, and this Court overturned the trial court's granting of the new trial, reinstating

Applicant's conviction and sentence. *State v. Arizmendi*, 519 S.W.3d 143 (Tex. Crim. App. 20107).

Applicant contends that her trial counsel rendered ineffective assistance and her plea was involuntary because counsel did not advise her that she could file a motion to suppress evidence based on a questionable traffic stop and failed to file such a motion on her behalf.

The trial court has determined that trial counsel's performance was deficient and that such deficient performance prejudiced Applicant. Relief is granted. The judgment in Cause No. 068589-01-E-WR in the 108<sup>th</sup> District Court of Potter County is set aside, and Applicant is remanded to the custody of the Sheriff of Potter 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: October 31, 2018  
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