



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-89,114-01

EX PARTE JAMES MCDONALD, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 2015CR12465-W1 IN THE 175TH DISTRICT COURT
FROM BEXAR COUNTY**

Per curiam. KELLER, P.J., filed a dissenting opinion in which KEEL, J., joined.

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 pleaded guilty and was convicted of aggravated sexual assault-child and sentenced to ten years' imprisonment. The Fourth Court of Appeals dismissed his direct appeal for lack of jurisdiction. *McDonald v. State*, 04-17-00804-CR (Tex. App.—San Antonio Jan. 24, 2018)(not designated for publication).

Applicant contends that his plea was involuntary because he was advised that he was facing a first degree felony punishment when the indictment did not properly charge any crime and the factual allegations contained in the indictment would have only supported a second degree felony.

He alleges that counsel advised him to take the State's plea offer because he would likely get life in prison if he chose to go to a jury trial and had he known he would only be facing a maximum sentence of twenty years, he would have rejected the State's plea offer.

The record supports Applicant's claims and both the State and the trial court agree that Applicant is entitled to relief. *Ex parte Huerta*, 692 S.W.2d 681 (Tex. Crim. App. 1985).

Relief is granted. The judgment in Cause No. 2015CR12465 in the 175th District Court of Bexar County is set aside, and Applicant is remanded to the custody of the Sheriff of Bexar 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: December 19, 2018
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