



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-89,262-01

EX PARTE MARK DOUGLAS STALEY, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 2003CR7441-W1 IN THE 399TH DISTRICT COURT
FROM BEXAR COUNTY**

Per curiam. YEARY, J., not participating.

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 one count of murder and one count of unlawfully carrying a weapon on licensed premises. He was sentenced to sixty years' imprisonment for the murder count, and ten years' imprisonment for the weapon count, to be served concurrently. The Fourth Court of Appeals affirmed his conviction. *Staley v. State*, No. 04-09-00215-CR (Tex. App. — San Antonio 2010) (not designated for publication).

Applicant contends that his trial counsel rendered ineffective assistance at the punishment stage because they failed to request a jury charge on the special issue of sudden passion arising from

adequate cause, and failed to call available character witnesses in mitigation of punishment.

The trial court has determined that trial counsel's performance was deficient in that counsel were unaware of the availability of the sudden passion instruction at punishment, and that such deficient performance prejudiced Applicant. Relief is granted. The sentence in Count I of Cause No. 2003CR7441-W1 in the 399th District Court of Bexar County is set aside, and Applicant is remanded to the custody of the Sheriff of Bexar County for a new hearing on punishment as to that count only. 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
Do not publish