



## IN THE COURT OF CRIMINAL APPEALS OF TEXAS

**NO. WR-89,276-01**

**EX PARTE HERSCHEL STEVEN TYSON, Applicant**

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS  
CAUSE NO. 2016F00036 IN THE 5th DISTRICT COURT  
FROM CASS 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 unlawful possession of a firearm by a felon and sentenced to three years' imprisonment. He did not appeal his conviction.

Applicant contends that his plea was involuntary because he was not made aware that the prior felony conviction upon which this offense was based was unavailable because the order setting aside his prior felony conviction released him from all penalties and disabilities resulting from that conviction. *Cuellar v. State*, 70 S.W.3d 815 (Tex. Crim. App. 2002). The trial court, with the

agreement of the State, recommends that relief be granted.

The trial court's findings are supported by the record, but we must first address the fact that the habeas corpus application before us is not compliant with TEX. R. APP. P. 73.1 in any way.<sup>1</sup> However, because the record clearly shows Applicant is entitled to relief, we exercise our jurisdiction and grant relief. *Ex parte Golden*, 991 S.W.2d 859 (Tex. Crim. App. 1999).

Relief is granted. The judgment in Cause No. 2016F00036 in the 5th District Court of Cass County is set aside, and Applicant is remanded to the custody of the Sheriff of Cass 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: January 9, 2019  
Do not publish

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<sup>1</sup> It should be noted that Applicant is represented by habeas counsel in this application. We would remind counsel to consult the appropriate statutes and rules before filing any habeas corpus applications in the future.