



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-89,601-01

EX PARTE CHARLES EDWARD THOMPSON, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 1380303-A IN THE 179TH DISTRICT COURT
FROM HARRIS COUNTY**

Per curiam. KELLER, P.J. filed a dissenting opinion in which KEEL and SLAUGHTER, JJ., joined. YEARY, J., filed a dissenting opinion.

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 of a controlled substance and sentenced to two years' imprisonment. He did not appeal his conviction.

Applicant contends that his plea was involuntary because a newly disclosed laboratory report shows that he possessed less than one gram of cocaine. He was charged with the third degree felony of possession of cocaine in an amount of one gram or more but less than four grams. Applicant was admonished as to the penalty range for a third degree felony. However, after Applicant's conviction

became final, the laboratory report was disclosed showing that the substance Applicant possessed weighed less than one gram. Because this quantity of cocaine would have only supported a charge and conviction for a state jail felony, the State agreed that Applicant's plea was not knowingly and voluntarily entered. The trial court determined that Applicant's decision to plead guilty in this case was not a voluntary and intelligent choice. *Brady v. United States*, 397 U.S. 742 (1969); *Ex parte Mable*, 443 S.W.3d 129, 131 (Tex. Crim. App. 2014).

Relief is granted. The judgment in Cause No. 138030301010 in the 179th District Court of Harris County is set aside, and Applicant is remanded to the custody of the Sheriff of Harris 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 2, 2019
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