



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-90,593-01

EX PARTE JAMES EARL JOSEPH, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 0297019-A IN THE 209TH DISTRICT COURT
FROM HARRIS COUNTY**

Per curiam. **KELLER, P.J., KEASLER and YEARY, JJ., concur with result only.**

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 charged with possession of a controlled substance, phencyclidine, in an amount between 4 and 200 grams. Applicant pleaded guilty and was placed on three years of deferred-adjudication probation. He was subsequently adjudicated guilty and sentenced to two years' imprisonment. He did not appeal.

The State's testing of the substance revealed that Applicant possessed less than 4 grams. Applicant argues that, in light of this new evidence, his guilty plea was involuntary and his conviction violated due process. The State agrees with Applicant. Applicant and the State submitted

agreed findings recommending that relief be granted. The trial court also recommends granting relief because, in light of the laboratory report, Applicant's decision to plead guilty was not voluntary and intelligent. *Brady v. United States*, 397 U.S. 742 (1970); *Ex parte Mable*, 443 S.W.3d 129 (Tex. Crim. App. 2014).

Relief is granted. The judgment in Cause No. 129701901010 in the 209th 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: December 11, 2019
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