



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-25,632-03

EX PARTE TRACY BRIAN BROWN, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 580614-C IN THE 339TH DISTRICT COURT
FROM HARRIS COUNTY**

Per curiam. YEARY and SLAUGHTER, JJ., dissented.

OPINION

Applicant was convicted of delivery of a controlled substance and sentenced to thirty-five years' imprisonment. The First Court of Appeals affirmed his conviction. *Brown v. State*, No. 01-92-00973-CR (Tex. App.—Houston [1st] 1993, pet. ref'd). Applicant filed this application for a writ of habeas corpus in the county of conviction, and the district clerk forwarded it to this Court. *See* TEX. CODE CRIM. PROC. art. 11.07.

Applicant contends, among other things, that his Sixth and Fourteenth Amendment rights to determine the objective of his defense were violated by counsel's concession of guilt during closing arguments. Applicant also contends that trial counsel was ineffective because he (1) failed to present the former or live testimony of a key defense witness; and (2) conceded his guilt during closing

arguments. Based on the record, the trial court has determined that Applicant's constitutional rights were violated and that trial counsel was ineffective.

Relief is granted. The judgment in cause number 580614 in the 339th 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 ten days from the date of this Court's mandate.

Copies of this opinion shall be sent to the Texas Department of Criminal Justice—Correctional Institutions Division and the Board of Pardons and Paroles.

Delivered: June 15, 2022
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