



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-93,862-01

EX PARTE JESUS BOCANEGRA, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 2018-415-881-A IN THE 137TH DISTRICT COURT
FROM LUBBOCK COUNTY**

Per curiam.

OPINION

Applicant was convicted of one count of aggravated assault with a deadly weapon causing serious bodily injury, and one count of assault with family violence by impeding circulation or breathing and sentenced to thirty-five years' imprisonment for the first count, and twenty years' imprisonment for the second count, to run concurrently. The Seventh Court of Appeals affirmed his conviction. *Bocanegra v. State*, No. 07-18-00424-CR (Tex. App. — Amarillo September 6, 2019) (not designated for publication). 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 trial counsel was ineffective because trial

counsel erroneously advised him that he could receive community supervision from the trial court, but not from the jury, causing Applicant to elect the trial court to determine punishment. In fact, Applicant would have been eligible for community supervision had he elected the jury for punishment, but was not eligible for community supervision from the court because the first count included an affirmative deadly weapon finding. TEX. CODE CRIM. PROC. ART. 42A.054(b). Based on the record, the trial court has determined that trial counsel's performance was deficient and that Applicant was prejudiced.

Relief is granted. *Strickland v. Washington*, 466 U.S. 668 (1984). The sentences in both counts of cause number 2018-415881 in the 137th District Court of Lubbock County are set aside, and Applicant is remanded to the custody of the Sheriff of Lubbock County to receive a new punishment hearing. 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 29, 2022
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