



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. AP-76,679

EX PARTE DEE EDWARD CARDER, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 09CR0618-83 IN THE 122ND DISTRICT COURT
FROM GALVESTON COUNTY**

Per curiam.

O P I N I O N

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 writ of habeas corpus. *Ex parte Young*, 418 S.W.2d 824, 826 (Tex. Crim. App. 1967). Applicant was convicted of attempted aggravated sexual assault of a child and sentenced to seven years' imprisonment. His direct appeal was dismissed after abatement and a hearing. *Carder v. State*, No. 14-10-00398-CR (Tex. App.–Houston [14th Dist.] Aug. 5, 2010) (unpublished).

Applicant contends that counsel, who was appointed specifically to seek shock probation, did not file the necessary motions to have Applicant considered while the trial court still had

jurisdiction under Section 6 of Article 42.12 of the Code of Criminal Procedure.

Trial counsel filed an affidavit with the trial court. Based on that affidavit, the trial court determined that counsel erred and Applicant was harmed by the error. Applicant is entitled to relief. *Strickland v. Washington*, 466 U.S. 668, 687 (1984).

Relief is granted. Applicant's sentence in Cause No. 09CR0618-83 in the 122nd Judicial District Court of Galveston County is set aside, and Applicant is remanded to the custody of the sheriff of Galveston County to be re-sentenced to seven years' imprisonment. The trial court shall issue any necessary bench warrant and shall determine whether Applicant is indigent within 10 days after the mandate of this Court issues. If Applicant is indigent and wishes to be represented by counsel, the trial court shall immediately appoint an attorney to represent Applicant at sentencing.

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

Delivered: November 9, 2011
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