



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. AP-76,790

EX PARTE GERALD LEE McMORRIS, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. A-6120-A IN THE 173RD DISTRICT COURT
FROM HENDERSON COUNTY**

Per curiam.

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 applications for a writ of habeas corpus. *Ex parte Young*, 418 S.W.2d 824, 826 (Tex. Crim. App. 1967). Applicant was convicted of aggravated robbery and sentenced to thirty-five years' imprisonment. He did not appeal his conviction.

On February 11, 2004, we denied relief in Applicant's 01 application.¹ We now withdraw that disposition on our own motion and grant relief. Applicant contends, among other things, that his counsel allowed him to plead guilty to, and be convicted of, an aggravated robbery when he was

¹ Writ No. 58,115-01

only charged with the offense of robbery. The record in this case reflects that the Applicant was charged with robbery, and he pled guilty and judicially confessed to committing robbery, but he was erroneously told that he was pleading guilty to aggravated robbery and facing the punishment range for an aggravated robbery. Therefore, based on the record before us, we find Applicant's plea of guilty was involuntary.

Relief is granted. The judgment in Cause No. A-6120-A in the 173rd Judicial District Court of Henderson County is set aside, and Applicant is remanded to the custody of the sheriff of Henderson 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.

Filed: May 9, 2012

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