



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. AP-76,877

EX PARTE DAVID LEE WIGGINS, Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 0345183D
IN THE 213TH DISTRICT COURT FROM TARRANT 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 aggravated sexual assault and sentenced to life imprisonment. The Second Court of Appeals affirmed his conviction. *Wiggins v. State*, No. 02-89-0217-CR (Tex. App.—Ft. Worth, delivered March 20, 1991, *pet. ref'd*).

Applicant contends that he has newly discovered evidence that he is actually innocent of this offense. The trial court has determined that no rational jury would have convicted Applicant in light of the new evidence, which was previously unavailable to Applicant. The evidence, obtained

pursuant to post-conviction DNA testing and investigation, indicates that it was another individual, and not Applicant, who committed this offense. The State and the trial court agree that Applicant is entitled to relief. *Ex parte Elizondo*, 947 S.W.2d 202, 209 (Tex. Crim. App. 1996).

Relief is granted. The judgment in Cause No. 0345183D in the 213th District Court of Tarrant County is set aside, and Applicant is remanded to the custody of the Sheriff of Tarrant County to answer the charge against him.

Copies of this opinion shall be sent to the Texas Department of Criminal Justice-Correctional Institutions Division and Parole Division.

Delivered: September 12, 2012
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