



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. AP-76,984

EX PARTE PERNELL DWAYNE MCCARDELL, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 11CR0236 IN THE 10th DISTRICT COURT
FROM GALVESTON 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 application for a writ of habeas corpus. *Ex parte Young*, 418 S.W.2d 824, 826 (Tex. Crim. App. 1967). Applicant was convicted of possession of a controlled substance and sentenced to eight years' imprisonment. He did not appeal his conviction.

Applicant contends that his due process rights were violated because a forensic scientist did not follow accepted standards when analyzing evidence and therefore the results of his analyses are unreliable. A Department of Public Safety report shows that the lab technician who was solely responsible for testing the evidence in this case is the scientist found to have committed misconduct. The record also shows that the evidence in this case has been destroyed and therefore cannot be

retested. Applicant is entitled to relief.

Relief is granted. The judgment in Cause No. 11CR0236 in the 10TH District Court of Galveston County is set aside, and Applicant is remanded to the custody of the Sheriff of Galveston County. 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.

Delivered: March 6, 2013
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