



## IN THE COURT OF CRIMINAL APPEALS OF TEXAS

**NO. AP -77,002**

**EX PARTE DARRELL WAYNE BIVENS, JR., Applicant**

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS  
CAUSE NO. 296-81350-2012  
IN THE 296<sup>TH</sup> DISTRICT COURT FROM COLLIN 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 pleaded guilty and was convicted of failing to register as a sex offender. He was sentenced to three years' imprisonment. He did not appeal his conviction.

Applicant committed indecency with a child when he was sixteen years old. He was certified as an adult and, after a period of deferred adjudication, was sentenced to two years' imprisonment. He fully discharged that sentence on approximately November 13, 1998. Because he was under

seventeen years' of age at the time of that offense, his crime was not considered a "sexually violent offense". TEXAS CODE CRIM. PRO. Art. 62.001(6). His duty to register as a sex offender therefore expired on the tenth anniversary of the discharge of that sentence. TEXAS CODE CRIM. PRO. Art. 62.12(b). The offense date alleged in this indictment was over three years after Applicant's duty to register as a sex offender had expired.

The State and the trial court agree that Applicant has established by clear and convincing evidence that a jury would acquit him of the charge.

Relief is granted. The judgment in Cause No. 296-81350-2012 in the 296<sup>th</sup> Judicial District Court of Collin County is set aside, and Applicant is remanded to the Collin County Sheriff to answer the charge against him.

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

Delivered: March 27, 2013  
Do Not Publish