

NO. 07-01-0458-CR
IN THE COURT OF APPEALS
FOR THE SEVENTH DISTRICT OF TEXAS
AT AMARILLO
PANEL A
JULY 1, 2002

DAVID HERRERA, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

FROM THE 251ST DISTRICT COURT OF POTTER COUNTY;
NO. 25,188-C; HONORABLE PATRICK A. PIRTLE, JUDGE

Before BOYD, C.J., and REAVIS and JOHNSON, JJ.

On June 21, 2001, appellant David Herrera filed a *pro se* motion for DNA testing pursuant to article 64.01 of the Texas Code of Criminal Procedure Annotated (Vernon Supp. 2002).¹ The motion was verified and accompanied by appellant's affidavit in support thereof. Appellant simultaneously filed motions for an interpreter and appointment of

¹Article 64.01 became effective on April 5, 2001.

counsel. On October 24, 2001, the trial court denied appellant's motions contending that the motion for DNA testing did not invoke its jurisdiction. Appellant timely perfected an appeal from the trial court's order. For the reasons expressed herein, we reverse and remand.

By his brief, appellant asserts the trial court abused its discretion in denying his motion for DNA testing. We agree. Further, the State responded by letter and conceded with professional candor that pursuant to article 64.01 of the Texas Code of Criminal Procedure, appellant is entitled to seek DNA testing and, if indigent, to appointed counsel for that purpose. See Tex. Code Crim. Proc. Ann. art. 64.01(a) and (c); see *also* Gray v. State, 69 S.W.3d 835 (Tex.App.–Waco 2002, no pet. h.).

Accordingly, the judgment of the trial court is reversed and the cause remanded to the trial court for further proceedings.

Don H. Reavis
Justice

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