IN THE
TENTH COURT OF APPEALS

No. 10-18-00031-CR

EX PARTE PRATEEK DESAI

From the County Court at Law No. 1
Johnson County, Texas
Trial Court No. CC-C20170504

MEMORANDUM OPINION

In this appeal from the denial of his application for writ of habeas corpus, Prateek Desai complains that "the evidence used in [his] criminal case for possession of marijuana was either no evidence as a matter of law or insufficient evidence." Because we overrule Desai's sole issue on appeal, we affirm.

I. BACKGROUND

Here, Desai was charged with a Class B misdemeanor possession of marihuana. As part of a plea bargain, Desai entered a plea of "guilty" and, on September 22, 2014, received twelve months' deferred adjudication community supervision. According to Desai, his community supervision terminated early on March 23, 2015. Desai admits that,

until now, he has not filed a motion for new trial or an appeal challenging his community supervision.

Thereafter, on November 21, 2017, Desai filed an application for writ of habeas corpus, asserting a collateral attack on the underlying order that placed him on community supervision. Specifically, Desai argued that the evidence used in the underlying criminal case was insufficient because both he and the arresting officer testified that the alleged quantity of marihuana Desai possessed was either a "small amount," "0.00," or "UNK quantity." After a hearing, the trial court denied Desai's application for writ of habeas corpus, and this appeal followed.

II. ANALYSIS

In his sole issue on appeal, Desai contends that the trial court abused its discretion by denying his application for writ of habeas corpus because the evidence used in the underlying criminal case was insufficient given that both he and the arresting officer testified that the alleged quantity of marihuana Desai possessed was either a "small amount," "0.00," or "UNK quantity." We disagree that the trial court abused its discretion.

We review a habeas court's decision on an application for writ of habeas corpus under an abuse-of-discretion standard. *Ex parte Wheeler*, 203 S.W.3d 317, 324 (Tex. Crim. App. 2006). We review the record evidence in the light most favorable to the habeas court's ruling, and we must uphold that ruling absent an abuse of discretion. *Kniatt v.*

State, 206 S.W.3d 657, 664 (Tex. Crim. App. 2006); *see Ex parte Rodriguez*, 378 S.W.3d 486, 489 (Tex. App.—San Antonio 2012, pet. ref'd). We give almost total deference to the trial court's findings that are "'based upon credibility and demeanor.'" *Ex parte Amezquita*, 223 S.W.3d 363, 367 (Tex. Crim. App. 2006) (quoting *Ex parte White*, 160 S.W.3d 46, 50 (Tex. Crim. App. 2004)).

> In habeas corpus proceedings, "[v]irtually every fact finding involves a credibility determination" and "the fact finder is the exclusive judge of the credibility of the witnesses." *Ex parte Mowbray*, 943 S.W.2d 461, 465 (Tex. Crim. App. 1996). In an article 11.072 habeas case, such as the one before us, the trial court is the sole finder of fact. *Ex parte Garcia*, 353 S.W.3d 785, 788 (Tex. Crim. App. 2011). "There is less leeway in an article 11.072 context to disregard the findings of the trial court" than there is in an article 11.07 habeas case, in which the Court of Criminal Appeals is the ultimate fact finder.

Ex parte Ali, 368 S.W.3d 827, 830 (Tex. App.—Austin 2012, pet. ref'd). We must also defer "not only to all implicit fact findings that the record will support in favor of a trial court's ruling, 'but also to the drawing of reasonable inferences from the facts.'" *Amador v. State*, 221 S.W.3d 666, 674-75 (Tex. Crim. App. 2007) (quoting *Kelly v. State*, 163 S.W.3d 722, 726 (Tex. Crim. App. 2005)).

For a court to reach the merits of an applicant's claim on habeas corpus, the applicant's claim must be cognizable on habeas corpus. *See Ex parte Tovar*, 901 S.W.2d 484, 486 (Tex. Crim. App. 1995); *Ex parte McLain*, 869 S.W.2d 349, 350 (Tex. Crim. App. 1994) ("A threshold determination in any post[-]conviction habeas corpus application is whether the claim presented is cognizable by way of collateral attack."). Habeas corpus

is available only for violations of constitutional or fundamental rights and jurisdictional defects. *Ex parte Ramey*, 382 S.W.3d 396, 297 (Tex. Crim. App. 2012). A conviction not supported by any evidence may be collaterally attacked by an application for writ of habeas corpus. *Ex parte Williams*, 703 S.W.2d 674, 679 (Tex. Crim. App. 1986). However, in such a collateral attack, the appellate court reviews only whether there is any evidence to support the judgment, not the sufficiency of the evidence. *See Ex parte McLain*, 869 S.W.2d at 350; *Ex parte Brown*, 757 S.W.2d 367, 368-69 (Tex. Crim. App. 1988) (citing *Ex parte Williams*, 703 S.W.2d at 680); *see also Holzschuh v. State*, No. 05-97-02157-CR, 1998 Tex. App. LEXIS 1931, at *7 (Tex. App.—Dallas Mar. 31, 1998, pet. ref'd) (mem. op., not designated for publication). Therefore, so long as the record is not totally devoid of evidentiary support, the appellate court will not set aside a conviction. *Ex parte Brown*, 757 S.W.2d at 368-69. "For the judgment to be void, the record must show a complete lack of evidence to support the conviction, not merely insufficient evidence. And a guilty plea constitutes some evidence for this purpose." *Nix v. State*, 65 S.W.3d 664, 668 n.14 (internal citations omitted).

> In a misdemeanor case[,] when a defendant enters a plea of guilty before the court[,] he admits every element of the offense. The same rule applies where the guilty plea to a misdemeanor is before the jury. Article 27.14, V.A.C.C.P., provides that in pleas of guilty or nolo contendere in a misdemeanor case before the court punishment may be assessed by the court with or without evidence within the discretion of the court. Thus, normally on appeal from a misdemeanor conviction based on a plea of guilty or nolo contendere[,] there can be no question of the sufficiency of the evidence. It follows that a collateral attack of the sufficiency of the

> evidence to support a misdemeanor conviction by habeas corpus is not permitted.

Ex parte Williams, 703 S.W.2d at 678 (internal citations omitted).

Here, Desai argues that the evidence used in his underlying criminal case constituted either no evidence or insufficient evidence. A review of the record shows that Desai pleaded "guilty" to the charged offense of possession of a controlled substance, marihuana, in amount less than two ounces. In light of *Williams*, Desai's guilty plea in this misdemeanor case amounted to an admission of every element of the charged offense and is conclusive of his guilt. *Id.* Furthermore, because of Desai's guilty plea, and because this is a misdemeanor case, pursuant to article 27.14(a) of the Code of Criminal Procedure, the trial court was authorized to accept Desai's plea and assess punishment without consideration of any evidence. *See* TEX. CODE CRIM. PROC. ANN. art. 27.14(a) (West Supp. 2017); *see also Ex parte Williams*, 703 S.W.2d at 678. We also note that Desai has not argued that his guilty plea was unknowing or involuntary.

In any event, as noted in *Williams*, Desai cannot collaterally attack the sufficiency of the evidence to support his misdemeanor conviction by habeas corpus. *Ex parte Williams*, 703 S.W.2d at 678. Moreover, we cannot say that the record is devoid of evidence in support of his underlying criminal case because Desai acknowledges that he pleaded "guilty" to the charged offense. *See Nix*, 65 S.W.3d at 668 n.14. And as noted in *Dix*, a guilty plea constitutes some evidence in support of his misdemeanor conviction. *See id.* Accordingly, we cannot say that the trial court abused its discretion in denying

Desai's application for writ of habeas corpus. *See Ex parte Wheeler*, 203 S.W.3d at 324. We overrule his sole issue on appeal.

III. CONCLUSION

We affirm the judgment of the trial court.

AL SCOGGINS
Justice

Before Chief Justice Gray,
Justice Davis, and
Justice Scoggins
Affirmed
Opinion delivered and filed May 9, 2018
Do not publish
[CR25]