IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. AP-75,977

EX PARTE PHILLIP D. DENBOW, Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS CAUSE NO. C-396-008298-0828463-A IN THE 396TH 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 possession with intent to deliver a controlled substance, methamphetamine, and delivery of a controlled substance, methamphetamine, and sentenced to thirty-five (35) years' imprisonment and a $5,000 fine. The Second Court of Appeals affirmed his conviction. *Denbow v. State,* No. 2-03-102-CR (Tex. App. – Fort Worth, August 24, 2004, pet. ref'd, untimely filed).

We remanded this application for findings of fact and conclusions of law concerning

Applicant's contentions that his convictions were obtained in violation of double jeopardy because he was convicted of two offenses arising from the single sale of a single controlled substance, and that his double jeopardy claim was not barred because he did not knowingly and intelligently relinquish his double jeopardy rights in prior proceedings.

The trial court has entered findings of fact and conclusions of law that Applicant's two convictions for the single specific sale of the same quantity of methamphetamine violated his protection against multiple punishments and that this claim is not barred from consideration because the violation is clearly apparent from the record. The trial court recommends vacating the conviction for delivery of a controlled substance. We find, therefore, that Applicant's convictions violate the Double Jeopardy Clause of the United States Constitution. We deny Applicant's claim relating to his conviction for possession with intent to deliver a controlled substance and grant his claim for relief from the jeopardy-barred conviction for delivery of a controlled substance.

Delivered: August 20, 2008
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