IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. AP-75,981

EX PARTE WILEY BURLESON, JR., Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS CAUSE NO. CR95-105 IN THE 22ND JUDICIAL DISTRICT COURT FROM COMAL 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 to forgery, and was sentenced to sixty years' imprisonment. He did not appeal his conviction.

Applicant contends that his sentence is illegal, and his counsel ineffective for allowing him to plead guilty in exchange for an unauthorized sentence. Because Applicant pleaded guilty to a third degree felony, enhanced by one prior felony conviction to second degree punishment range, he should have been subject to a maximum sentence of twenty years' imprisonment.

The trial court determined that Applicant's sixty-year sentence is unauthorized. Applicant is entitled to relief. *Ex parte Huerta*, 692 S.W.2d 681 (Tex. Crim. App. 1985). The trial court recommends that Applicant's sentence be reformed. However, because Applicant pleaded guilty pursuant to a plea agreement, his judgment and sentence must be set aside.

Relief is granted. The judgment in Cause No. CR95-105 in the 22nd Judicial District Court of Comal County is set aside, and Applicant is remanded to the trial court 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: September 10, 2008
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