IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. AP-76,065

EX PARTE ROBERTO ENRIQUE LOPEZ, JR., Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS CAUSE NO. 06-03-0091-CR IN THE 81ST DISTRICT COURT FROM ATASCOSA 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 of cocaine less than one gram and sentenced to twenty-four months' imprisonment. Applicant did not appeal the conviction.

Applicant contends that his sentence was illegal because it was not suspended as required by Texas Code of Criminal Procedure Art. 42.12, Section 15(a)(1).

The trial court recommends granting relief. The record does not show that Applicant had

been previously convicted of a felony offense; therefore Applicant's sentence should have been suspended. We find, therefore, that Applicant is entitled to relief.

Relief is granted. The sentence in Cause No. 06-03-0091-CR in the 81st Judicial District Court of Atascosa County is vacated, and Applicant is remanded to the custody of the Sheriff of Atascosa County to allow the trial court to sentence Applicant in compliance with Texas Code of Criminal Procedure Art. 42.12, Sect. 15(a)(1).

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

Delivered: January 14, 2009
Do Not Publish