IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NOS. AP-76,179 & AP-76,187

EX PARTE ALAN WADE CUNNINGHAM, Applicant

ON APPLICATIONS FOR WRITS OF HABEAS CORPUS CAUSE NOS. 13,032 & 13,033 IN THE 21ST DISTRICT COURT FROM WASHINGTON 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 these applications for writ of habeas corpus. *Ex parte Young*, 418 S.W.2d 824, 826 (Tex. Crim. App. 1967). Applicant was convicted of aggravated sexual assault and sentenced to twelve years' imprisonment in both of these cause numbers. He did not appeal his convictions.

Applicant contends that his plea was involuntary and his counsel was ineffective because the plea agreement was not followed. We remanded these applications to the trial court for findings of fact and conclusions of law.

The trial court held a hearing to determine the facts of these cases. Based on that hearing, the trial court determined that there are no documents to support a finding of guilt in cause number 13,032. The trial court has determined that Applicant never pleaded to that case and the judgment entered in that case should never have been entered. Applicant is entitled to relief as to cause number 13,032.

Relief is granted. The judgment in Cause No. 13,032 in the 21st Judicial District Court of Washington County is set aside, and Applicant is remanded to the custody of the sheriff of WASHINGTON County to answer the charges as set out in the indictment.

Neither the judgment, nor the oral pronouncement of sentence in cause number 13,033 mentions different counts. The record reflects that Applicant is serving one 12 year sentence in cause number 13,033, as agreed to by the parties at the sentencing hearing. He has therefore shown no breach of a plea agreement and no harm as to that conviction. Relief is denied for all claims relating to cause number 13,033.

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

Delivered: July 1, 2009
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