IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. AP-76,227

EX PARTE FLOYD FREDERICK MCCRARY, Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS CAUSE NO. 21-229 IN THE 354TH DISTRICT COURT FROM HUNT 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 a controlled substance and sentenced to eight years' imprisonment. He did not appeal his conviction.

Applicant contends that his plea was involuntary because he was told and believed that his federal sentence would run concurrently with this sentence. We remanded this application to the trial court for findings of fact and conclusions of law.

Trial counsel filed an affidavit with the trial court. The affidavit states that counsel believed,

and informed Applicant, that this sentence would run concurrently with his federal sentence. The reporter's record from the plea hearing also shows that Applicant believed this sentence would run concurrently with his federal sentence. Applicant is entitled to relief. *Ex parte Huerta*, 692 S.W.2d 681 (Tex. Crim. App. 1985).

Relief is granted. The judgment in Cause No. 21-229 in the 354th Judicial District Court of Hunt County is set aside, and Applicant is remanded to the custody of the sheriff of Hunt County to answer the charges as set out in the indictment.

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

Delivered: September 23, 2009
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