IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. AP-76,242

EX PARTE JERRY LEE EVANS Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS CAUSE NO. 86-92048-L IN THE CRIMINAL DISTRICT COURT NUMBER FIVE FROM DALLAS 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 aggravated sexual assault and sentenced to life imprisonment. The Fifth Court of Appeals affirmed his conviction. *Evans v. State*, No. 05-87-00192-CR (Tex. App–Dallas, delivered December 28, 1987, no pet.).

Applicant contends that, based upon newly discovered evidence, he is actually innocent of the offense in this cause. Specifically, the Applicant contends that post-conviction DNA testing, which was not available at the time of trial, reflects that he is actually innocent.

The trial court has entered findings of fact and conclusions of law, based upon DNA test results it has received, that the Applicant has been eliminated as the contributor of the sperm fraction found in the vaginal swab taken after the sexual assault. The trial court concludes that Applicant has proved by clear and convincing evidence that a jury would acquit him based on this newly discovered evidence and would find that he is not guilty of this offense. We agree. Applicant is entitled to relief. *Ex parte Tuley*, 109 S.W.3d 388 (Tex. Crim. App. 2002); *Ex parte Elizondo*, 947 S.W.2d 202 (Tex. Crim. App. 1996).

Relief is granted. The judgment in Cause No. 86-92048-L in the Criminal District Court Number Five of Dallas County is set aside, and Applicant is remanded to the custody of the Sheriff of Dallas County 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: October 21, 2009
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