IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. AP-76,978

EX PARTE RICHARD A. CRUTCHFIELD, Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS CAUSE NO. 241-1405-09 IN THE 241ST DISTRICT COURT FROM SMITH 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 a writ of habeas corpus. *Ex parte Young*, 418 S.W.2d 824, 826 (Tex. Crim. App. 1967). Applicant was convicted of burglary of a habitation and sentenced to life imprisonment. The Twelfth Court of Appeals affirmed his conviction. *Crutchfield v. State*, No. 12-09-00440-CR (Tex. App.—Tyler Jul. 29, 2011) (unpublished).

Applicant contends that his trial counsel rendered ineffective assistance because he did not discover that a conviction alleged as an enhancement and used as punishment evidence had been reversed and dismissed. Applicant contends that this failure prevented counsel from properly

challenging the use of that prior conviction in the punishment phase.

The trial court has determined that trial counsel's performance was deficient in that counsel did not discover that a prior conviction resulting in a life sentence had been overturned on appeal and then dismissed. As counsel did not discover this and demonstrate that the prior conviction was invalid, the State was able to use the vacated life sentence at punishment as evidence and in argument, which prejudiced Applicant. Relief is granted. The sentence in Cause No. 241-1405-09 in the 241st District Court of Smith County is vacated, and Applicant is remanded to the custody of the Sheriff of Smith County so that the trial court may conduct new punishment proceedings. The trial court shall issue any necessary bench warrant within 10 days after the mandate of this Court issues.

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

Delivered: March 6, 2013
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