IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-93,717-01

EX PARTE BRIYON SMITH, Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS CAUSE NO. D-1-DC-19-300593-A IN THE 167TH DISTRICT COURT FROM TRAVIS COUNTY

***Per curiam*.**

O P I N I O N

Applicant was convicted of aggravated assault and sentenced to ten years' imprisonment. Applicant filed this application for a writ of habeas corpus in the county of conviction, and the district clerk forwarded it to this Court. *See* TEX. CODE CRIM. PROC. art. 11.07.

Applicant contends that plea was involuntary because the plea agreement was conditioned on an agreement for shock probation if Applicant successfully completed the initial portion of his sentence. Based on the record, the trial court has determined that Applicant completed his portion of the bargain, but counsel failed to timely file a motion for shock probation. It also determined that the plea agreement was conditioned on an agreement for shock probation.

Relief is granted. *Brady v. United States*, 397 U.S. 742 (1970). The judgment in cause

number D-1-DC-19-300593 in the 165th District Court of Travis County is set aside, and Applicant is remanded to the custody of the Sheriff of Travis County to answer the charges as set out in the indictment. The trial court shall issue any necessary bench warrant within ten days from the date of this Court's mandate.

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

Delivered: May 18, 2022
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