



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-90,968-01

EX PARTE KEVIN WILLIAM MCGAUGH, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 2016-1331-C2A IN THE 54TH DISTRICT COURT
FROM MCLENNAN COUNTY**

Per curiam.

OPINION

Applicant pleaded guilty to indecency with a child and was sentenced to twenty years' imprisonment. The Tenth Court of Appeals dismissed his appeal. *McGaugh v. State*, No. 10-18-00337-CR (Tex. App.—Waco Nov. 14, 2018)(not designated for publication). 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 his plea was involuntary because trial counsel failed to investigate and present a defense. He also alleges that counsel failed to properly prepare for and present witnesses at the sentencing hearing. Based on the record, Applicant meets his burden to obtain a new punishment hearing, but fails in his burden to show that his plea was involuntary.

Relief is granted as to sentencing. *Hill v. Lockhart*, 474 U.S. 52 (1985); *Ex parte Argent*, 393 S.W.3d 781 (Tex. Crim. App. 2013). The sentence in cause number 2016-1331-C2 in the 54th District Court of McLennan County is set aside, and Applicant is remanded to the custody of the Sheriff of McLennan County for a new punishment hearing. 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: June 17, 2020
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