



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-91,233-01

EX PARTE ROGELIO GUTIERREZ, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 1993CR4909-W1 IN THE 186TH DISTRICT COURT
FROM BEXAR COUNTY**

Per curiam. HERVEY, J. did not participate. YEARY AND SLAUGHTER, JJ. dissented.

OPINION

Applicant was convicted of aggravated sexual assault of a child and sentenced to thirty years' imprisonment. The Fourth Court of Appeals affirmed his conviction. *Gutierrez v. State*, No. 04-94-00207-CR (Tex. App.—San Antonio Jan. 10, 1996)(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, among other things, that the prosecution did not turn over documents which could have been used by the defense to challenge the complainant's credibility. Based on the record, the trial court has determined that Applicant is entitled to relief. The State agrees with that recommendation.

We agree. Relief is granted. *Ex parte Kimes*, 872 S.W.2d 700, 702-703 (Tex. Crim. App. 1993). The judgment in cause number 93-CR-4909 in the 186th District Court of Bexar County is set aside, and Applicant is remanded to the custody of the Sheriff of Bexar County to answer the charges against him. The trial court shall issue any necessary bench warrant within ten days from the date of this Court's mandate. This Court denies any relief based on Applicant's claim of actual innocence.

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: July 1, 2020
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