

By: Carona

S.B. No. 1116

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the appeal of certain hearings related to a grant of  
3 deferred adjudication community supervision and to certain related  
4 applications for a writ of habeas corpus.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Article 11.07, Code of Criminal Procedure, is  
7 amended by adding Section 4A and amending Section 5 to read as  
8 follows:

9 Sec. 4A. If an application for a writ of habeas corpus is  
10 filed in a cause in which the applicant previously sought review on  
11 direct appeal of a determination made under Section 5(b), Article  
12 42.12, the Court of Criminal Appeals shall direct that the cause be  
13 docketed and heard under Section 5 if review of the cause on direct  
14 appeal was denied by the appellate court on the grounds that the  
15 court lacked jurisdiction.

16 Sec. 5. Except as provided by Section 4A, the ~~The~~ Court of  
17 Criminal Appeals may deny relief upon the findings and conclusions  
18 of the hearing judge without docketing the cause, or may direct that  
19 the cause be docketed and heard as though originally presented to  
20 said court or as an appeal. Upon reviewing the record the court  
21 shall enter its judgment remanding the applicant to custody or  
22 ordering his release, as the law and facts may justify. The mandate  
23 of the court shall issue to the court issuing the writ, as in other  
24 criminal cases. After conviction the procedure outlined in this

1 Act shall be exclusive and any other proceeding shall be void and of  
2 no force and effect in discharging the prisoner.

3 SECTION 2. Subsection (b), Section 5, Article 42.12, Code  
4 of Criminal Procedure, is amended to read as follows:

5 (b) On violation of a condition of community supervision  
6 imposed under Subsection (a) of this section, the defendant may be  
7 arrested and detained as provided in Section 21 of this article.  
8 The defendant is entitled to a hearing limited to the determination  
9 by the court of whether it proceeds with an adjudication of guilt on  
10 the original charge. This determination is reviewable in the same  
11 manner as a revocation hearing conducted under Section 21 in a case  
12 in which an adjudication of guilt had not been deferred [~~No appeal~~  
13 ~~may be taken from this determination~~]. After an adjudication of  
14 guilt, all proceedings, including assessment of punishment,  
15 pronouncement of sentence, granting of community supervision, and  
16 defendant's appeal continue as if the adjudication of guilt had not  
17 been deferred. A court assessing punishment after an adjudication  
18 of guilt of a defendant charged with a state jail felony may suspend  
19 the imposition of the sentence and place the defendant on community  
20 supervision or may order the sentence to be executed, regardless of  
21 whether the defendant has previously been convicted of a felony.

22 SECTION 3. (a) Article 11.07, Code of Criminal Procedure,  
23 as amended by this Act, applies only to an application for a writ of  
24 habeas corpus that is filed on or after the effective date of this  
25 Act. An application for a writ of habeas corpus that is filed  
26 before the effective date of this Act is governed by the law in  
27 effect at the time the application was filed, and the former law is

1 continued in effect for that purpose.

2 (b) Subsection (b), Section 5, Article 42.12, Code of  
3 Criminal Procedure, as amended by this Act, applies to a hearing  
4 conducted under that section on or after the effective date of this  
5 Act, regardless of when the adjudication of guilt was originally  
6 deferred or when the offense giving rise to the grant of deferred  
7 adjudication community supervision was committed.

8 SECTION 4. This Act takes effect September 1, 2007.