

By: Smithee, Wu, Thompson of Harris

H.B. No. 4202

A BILL TO BE ENTITLED

AN ACT

relating to the authority of a court to grant a motion for a new trial in certain criminal cases.

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

SECTION 1. Chapter 40, Code of Criminal Procedure, is amended by adding Article 40.002 to read as follows:

Art. 40.002. NEW TRIAL ON MOTION BY AGREEMENT OF PARTIES.

(a) At any time during the period of a term of imprisonment of more than three years or at any time after the imposition of the penalty of death, a defendant may, with the written consent of the district attorney or criminal district attorney, file a motion for a new trial with the convicting court. The motion must include an agreed statement of facts for the court to consider.

(b) The court may, after a hearing, grant the defendant a new trial in the interest of justice. The court may rely on the agreed statement in granting a new trial, and the agreed statement may constitute the entire record in the cause.

(c) The rights of appeal provided by Chapter 44 apply to a decision of a court to grant a new trial under this article, except that neither the attorney representing the state nor the defendant is entitled to appeal the court's decision to deny a motion for a new trial.

(d) The attorney representing the state may condition the attorney's consent to a motion for a new trial on any appropriate

1 reason, including a requirement that the defendant:

2 (1) plead guilty and accept a specific punishment;

3 (2) waive the defendant's parole eligibility as part
4 of any punishment agreement; or

5 (3) waive the defendant's right to appeal.

6 (e) Until the trial court has granted the motion under this
7 article, the defendant may withdraw the motion or the attorney
8 representing the state may withdraw consent to the motion. If the
9 motion or consent is withdrawn, the court is prohibited from
10 granting a new trial in the case based on that motion.

11 SECTION 2. Section 5, Article 11.07, Code of Criminal
12 Procedure, is amended to read as follows:

13 Sec. 5. The Court of Criminal Appeals may deny relief upon
14 the findings and conclusions of the hearing judge without docketing
15 the cause, or may direct that the cause be docketed and heard as
16 though originally presented to said court or as an appeal. Upon
17 reviewing the record the court shall enter its judgment remanding
18 the applicant to custody or ordering his release, as the law and
19 facts may justify. The mandate of the court shall issue to the
20 court issuing the writ, as in other criminal cases. After
21 conviction, except as otherwise provided by Article 40.002, the
22 procedure outlined in this article [~~Act~~] shall be exclusive and any
23 other proceeding shall be void and of no force and effect in
24 discharging the prisoner.

25 SECTION 3. Section 1, Article 11.071, Code of Criminal
26 Procedure, is amended to read as follows:

27 Sec. 1. APPLICATION TO DEATH PENALTY CASE. Notwithstanding

1 any other provision of this chapter, this article establishes the
2 procedures for an application for a writ of habeas corpus in which
3 the applicant seeks relief from a judgment imposing a penalty of
4 death. This article does not affect the authority of a court to
5 grant a motion for a new trial under Article 40.002.

6 SECTION 4. This Act takes effect September 1, 2019.