

By: Smithee

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 attorney representing the state, file a motion for a new trial with the convicting court. The court may, after a hearing, grant the defendant a new trial in the interest of justice.

(b) Notwithstanding any other law, a defendant who is granted a new trial under this article may be prosecuted and punished in accordance with the statutory provisions criminalizing and prescribing punishment for the applicable conduct that were in effect at the time the conduct occurred or under the applicable statutory provisions in effect at the time the new trial is granted.

(c) Neither the attorney representing the state nor the defendant is entitled to make an interlocutory appeal from the court's decision to grant or deny a motion for a new trial under this article.

(d) The attorney representing the state may condition the

1 attorney's consent to a motion for a new trial on any appropriate  
2 reason, including a requirement that the defendant:

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

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

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

7 (e) Until the trial court has granted the motion under this  
8 article, the defendant may withdraw the motion or the attorney  
9 representing the state may withdraw consent to the motion. If the  
10 motion or consent is withdrawn, the court may not grant a new trial  
11 in the case based on that motion.

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

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

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

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

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