

Defendant's adult parole from juvenile adjudication constituted conviction for purposes of statute governing eligibility for mandatory supervision. [Ex Parte Valdez](13-3-6)

On June 26, 2013, the Texas Court of Criminal Appeals denied an application for Writ of Habeas Corpus, finding that applicant's transfer from TYC to TDCJ did not alter the fact that, upon his release on parole, he was considered to have been convicted of murder, the offense for which he had been adjudicated, and as a result not eligible for mandatory-supervision review.

¶ 13-3-6. **Ex Parte Valdez**, No. AP-76,867, --- S.W.3d ----, 2013 WL 3196870 (Tex.Crim.App., 6/26/13).

**Facts:** Applicant, Joe Anthony Valdez, was adjudicated as a juvenile for committing murder with a deadly weapon, a first-degree felony under Texas Penal Code Section 19.02. He received a determinate sentence of fifteen years. Applicant was committed to the Texas Youth Commission (TYC) until his eighteenth birthday and was then transferred by the juvenile court to Texas Department of Criminal Justice (TDCJ) to complete his sentence. FN1 He was released from TDCJ on parole. His parole was later revoked for burglary of a habitation with the intent to commit assault, a second degree felony under Texas Penal Code Section 30.02. He pled nolo contendere to the offense and was sentenced to sixteen years' imprisonment. Applicant filed an application for writ of habeas corpus, contending that TDCJ is improperly denying him review for mandatory-supervision release based on his prior juvenile adjudication of delinquent conduct.

The trial court entered findings of fact and conclusions of law culminating with the following:

If the Court finds that Applicant's juvenile adjudication became a first-degree felony conviction of murder upon transfer to TDCJ, this Court recommends that this application be DENIED. However, if the Court finds that Applicant's juvenile adjudication did not become a first-degree felony conviction for murder upon transfer to the custody of the Texas Department of Criminal Justice, then it is recommended that this application be GRANTED and Applicant should be evaluated for release on mandatory supervision.

We filed and set this application to determine “whether a prior juvenile adjudication for conduct, that would have been an ineligible felony had it been committed by an adult, renders an inmate ineligible for mandatory-supervision review when serving subsequent offenses which are mandatory release eligible on their own.”

**Held:** Petition denied

**Opinion:** Eligibility for mandatory supervision is determined by the law in effect on the date that the inmate committed the offense. Ex parte Hernandez, 275 S.W.3d 895 (Tex.Crim.App.2009). When Applicant committed the burglary-of-a-habitation offense in 2007, Texas Government Code Section 508.149 stated in relevant part:

(a) An inmate may not be released to mandatory supervision if the inmate is serving a sentence for or has been previously convicted of:

(1) an offense for which the judgment contains an affirmative finding under Section 3(g)(a)(2), Article 42.12, Code of Criminal Procedure;

(2) a first degree felony or a second degree felony under Section 19.02, Penal Code.

Subsection (a)(1) refers to a deadly-weapon finding and subsection (a)(2) refers to the offense of murder. Thus, Applicant's juvenile offense of murder with a deadly weapon, a first-degree felony, clearly fits into the category of offenses ineligible for release on mandatory supervision. We must determine whether Applicant was actually "convicted of" the juvenile offense versus being "adjudicated as having engaged in delinquent conduct," and whether Applicant's transfer from TYC to TDCJ had any effect on this determination. Whether Applicant's juvenile adjudication at some point became a conviction is the deciding factor here.FN4

Under Texas Government Code Section 508.156(f), "a person released from the Texas Youth Commission on parole under this section is considered to have been convicted of the offense for which the person has been adjudicated." Applicant argues that because he was not released from TYC on parole and was instead released from TDCJ on parole under his juvenile adjudication, he should not be considered to have been convicted of his juvenile offense of murder with a deadly weapon.

We agree with the State that Applicant's interpretation of the law would lead to absurd results. Applicant's version would mean that an offender released directly from TYC on parole would be considered to be convicted of the offense while an offender transferred, due simply to age, from TYC to TDCJ and later released on parole would not. We cannot imagine a scenario where the legislature would intend for older juveniles, who have been transferred to TDCJ, to remain free from conviction while younger juveniles who serve all of their time in TYC would be considered to be convicted for the same offense.

We construe a statute in accordance with the plain meaning of its text unless the plain meaning leads to absurd results that the legislature could not have possibly intended. *Boykin v. State*, 818 S.W.2d 782, 785 (Tex.Crim.App.1991). Texas Government Code Section 311.023 states that:

In construing a statute, whether or not the statute is considered ambiguous on its face, a court may consider among other matters the:

(1) object sought to be attained;

- (2) circumstances under which the statute was enacted;
- (3) legislative history;
- (4) common law or former statutory provisions, including laws on the same or similar subjects;
- (5) consequences of a particular construction;
- (6) administrative construction of the statute; and
- (7) title (caption), preamble, and emergency provision.

The legislative history provides some guidance on the question before us.

The parole and mandatory-supervision statute, Texas Code of Criminal Procedure Article 42.18, was revised in 1987 so that certain violent offenders were not eligible for mandatory supervision. In 1995, the statute was further amended to prevent offenders who had previously been convicted of crimes ineligible for mandatory supervision from eligibility for any future conviction, regardless of their current offense. This revision applied to those who were serving a sentence for an offense committed on or after September 1, 1995. The Bill Analysis for this amendment states that one of the purposes of the legislation is that, “If a prisoner previously served time for a violent offense which is ineligible for mandatory supervision, he will never be eligible for mandatory supervision, regardless of the offense, for any subsequent prison sentence.” Tex. H.B. 1433, 74th Leg., R.S. (1995). We note that the stated purpose of mandatory-supervision ineligibility was to prevent those who had “served time” for a violent offense from eligibility for subsequent offenses; a “conviction” for a violent offense was not stated as a requirement. In 1997, Texas Code of Criminal Procedure Article 42.18 was repealed and the Parole and Mandatory Supervision law was codified under Texas Government Code Chapter 508. The evolution of the predecessor to this code makes it clear that the legislature intended to prevent those who have committed certain prior violent offenses from eligibility for mandatory-supervision review. In keeping with this intent, we will not narrow the definition of “conviction” to exclude adjudicated juvenile offenders who were transferred to TDCJ due to age and released from TDCJ on parole.

**Conclusion:** Applicant's transfer from TYC to TDCJ did not alter the fact that, upon his release on parole, he was considered to have been convicted of the offense for which he had been adjudicated. Applicant's juvenile adjudication was a first-degree felony conviction for the purpose of mandatory-supervision eligibility, and TDCJ was correct that Applicant is not eligible for mandatory-supervision review. Relief is denied.