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⚖ Vol. 16, No. 17, May 5, 2008

Case Name: [Ex parte Armando Quintana Villanueva](#)

- OFFENSE: Post-Conviction Habeas Corpus (Art. 11.072, C.Cr.P.)
- COUNTY: Hidalgo
- COURT OF APPEALS: Corpus Christi 2006
- C/A CITATION: Unpublished
- C/A RESULT: Appeal Dismissed
- CCA. CASE No. PD-1836-06 DATE OF OPINION: April 30, 2008
- DISPOSITION: Court of Appeals Reversed
- OPINION: Judge Keasler VOTE: 9-0
- TRIAL COURT: 398th D/C; Hon. Aida Flores
- LAWYERS: [John Jasuta](#) (Defense); [Cheryl Hole](#) (State)

⚖ **561.01 Post-Conviction Habeas Corpus / Procedures / Jurisdiction:** Appellant was convicted of misdemeanor assault and placed on two years' community supervision. After the expiration of his community supervision, he filed an application for a writ of habeas corpus under Art. 11.072, C.Cr.P., requesting that his conviction and sentence be set aside. The trial judge entered an order denying Appellant's application as frivolous. Appellant filed notice of appeal, but the Court of Appeals dismissed the appeal for lack of jurisdiction because the trial judge did not consider the merits of Appellant's claims. Appellant claims that the Court of Appeals should have exercised its jurisdiction to review the trial court's decision.

Holding: The Court of Appeals had jurisdiction to consider Appellant's appeal and erroneously dismissed the appeal. The longstanding rule in this state is that no appeal can be had from a refusal to issue or grant a writ of habeas corpus even after a hearing. Only when a hearing is held on the merits of an applicant's claims and there is a ruling on the merits of the claims may a losing party appeal. However, Art. 11.072, § 4, provides that a writ of habeas corpus "issues by operation of law" when the application is filed. Section 4 represents a significant departure from prior writ law that allowed a judge, in his or her discretion, to refuse to issue a writ. In providing for automatic issuance, Sec. 4 was enacted with the specific purpose of eliminating a trial judge's discretion to issue a writ. Also, Art. 11.072, § 8, grants an applicant the right to appeal if the trial judge denies the application in whole or in part. Thus, the longstanding traditional rule has been superceded by §§ 4 and 8 of Art. 11.072 to the extent that it applies to an appeal from the disposal of an Art. 11.072 application for a writ of habeas corpus. When an application is presented in compliance with the statutory procedural requirements fixed by the Legislature, the judiciary, in the exercise of its core functions, is then responsible for resolving the merits of an applicant's substantive claims.