



## IN THE COURT OF CRIMINAL APPEALS OF TEXAS

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NO. WR-79,560-03

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EX PARTE ZACK ELDRED, JR., Applicant

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ON APPLICATION FOR A WRIT OF HABEAS CORPUS  
CAUSE NO. 11F0762-102-B IN THE 102ND DISTRICT COURT  
FROM BOWIE COUNTY

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*Per curiam.*

### OPINION

Pursuant to the provisions of Article 11.07 of the Texas Code of Criminal Procedure, the clerk of the trial court transmitted to this Court this application for a writ of habeas corpus. *Ex parte Young*, 418 S.W.2d 824, 826 (Tex. Crim. App. 1967). Applicant was convicted of continuous sexual abuse of a child and sentenced to life imprisonment. The Sixth Court of Appeals affirmed his conviction. *Eldred v. State*, No. 06-13-00128-CR (Tex. App. — Texarkana, March 5, 2014)(not designated for publication).

Applicant contends that his appellate counsel rendered ineffective assistance because counsel failed to timely notify Applicant that his conviction had been affirmed.

Appellate counsel filed an affidavit with the trial court, in which she states that she did send Applicant a copy of the appellate opinion, but that she did so via regular mail rather than by certified mail as required by Rule 48.4 of the Texas Rules of Appellate Procedure. Therefore, appellate counsel has no proof that Applicant received the appellate opinion. In addition, due to a change in her address, appellate counsel did not receive communications from Applicant regarding the status of his appeal. Based on appellate counsel's affidavit, the trial court has entered findings of fact and conclusions of law that through no fault of his own, Applicant was deprived of his opportunity to petition this Court for discretionary review. The trial court recommends that relief be granted. *Ex parte Wilson*, 956 S.W.2d 25 (Tex. Crim. App. 1997).

We find, therefore, that Applicant is entitled to the opportunity to file an out-of-time petition for discretionary review of the judgment of the Sixth Court of Appeals in Cause No. 06-13-00128-CR that affirmed his conviction in Cause No. 11F0762-102 from the 102nd District Court of Bowie County. Applicant shall file his petition for discretionary review with this Court within 30 days of the date on which this Court's mandate issues.

Delivered: August 26, 2015  
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