



## IN THE COURT OF CRIMINAL APPEALS OF TEXAS

**NO. WR-82,026-01**

**EX PARTE TIMOTHY HERRING, Applicant**

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS  
CAUSE NO. CR 16345 IN THE 271ST DISTRICT COURT  
FROM WISE COUNTY**

*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 attempted capital murder and sentenced to twenty years' imprisonment. The Second Court of Appeals affirmed his conviction. *Herring v. State*, No. 02-12-00546-CR (Tex. App. — Fort Worth, January 16, 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. We remanded this

application to the trial court for findings of fact and conclusions of law.

Appellate counsel filed an affidavit with the trial court. Based on that affidavit, the trial court has entered findings of fact and conclusions of law that appellate counsel cannot prove that he timely notified Applicant that his conviction had been affirmed. 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 Second Court of Appeals in Cause No. 02-12-00546-CR that affirmed his conviction in Cause No. CR 16345 from the 271st District Court of Wise 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: February 11, 2015  
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