



# IN THE COURT OF CRIMINAL APPEALS OF TEXAS

**NO. WR-82,072-01**

**EX PARTE KENNETH LASHON GREEN, Applicant**

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS  
CAUSE NO. CR38038 IN THE 385TH DISTRICT COURT  
FROM MIDLAND 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 two counts of sexual assault and sentenced to four years' imprisonment for each count, to run consecutively. The Eleventh Court of Appeals affirmed his conviction. *Green v. State*, No. 11-11-00273-CR (Tex. App. — Eastland, August 30, 2013).

Applicant contends, among other things, that this Court improperly dismissed his *pro se* petition for discretionary review as untimely filed. We remanded this application to the trial court

for findings of fact and conclusions of law.

The trial court has obtained an affidavit and attachments from a Program Supervisor of the Mail System Coordinators Panel of TDCJ-ID. Based on that affidavit, it appears that Applicant placed his petition for discretionary review in the prison mail system on November 29, 2013, and that it was properly addressed to the Clerk of this Court. The petition was delivered to the United States Postal Service on December 2, 2013, and received by this Court on December 5, 2013. Because the petition was due on December 2, 2013, and because Applicant placed it in the prison mail system before that date, this Court erred by dismissing the petition as untimely filed. *See Taylor v. State*, 424 S.W.3d 39, 44 (Tex. Crim. App. 2014).

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 Eleventh Court of Appeals in Cause No. 11-11-00273-CR that affirmed his conviction in Cause No. CR38038 from the 385th District Court of Midland 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.

Applicant's remaining claims are dismissed. *See Ex parte Torres*, 943 S.W.2d 469 (Tex. Crim. App. 1997).

Delivered: April 1, 2015  
Do not publish