



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-83,087-01

EX PARTE ELISEO RIVERA JR., Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. CR-09E-061 IN THE 222ND DISTRICT COURT
FROM DEAF SMITH 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 evading arrest or detention and sentenced to twenty years' imprisonment. The Seventh Court of Appeals affirmed his conviction. *Rivera v. State*, No. 07-09-0332-CR (Tex. App.—Amarillo June 8, 2010).

Applicant contends that his appellate counsel rendered ineffective assistance because counsel failed to timely notify Applicant that his conviction had been affirmed and that he had a right to file a *pro se* petition for discretionary review.

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 failed to timely notify Applicant that his conviction had been affirmed and that he had a right to file a *pro se* petition 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 Seventh Court of Appeals in Cause No. 07-09-0332-CR that affirmed his conviction in Cause No. CR-09E-061 from the 222nd District Court of Deaf Smith 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. *Ex Parte Torres*, 943 S.W.2d 469 (Tex. Crim. App. 1997).

Delivered: May 13, 2015
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