



## IN THE COURT OF CRIMINAL APPEALS OF TEXAS

**NO. WR-83,362-02**

**EX PARTE LESLIE KENNETH HOLTE, II, Applicant**

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS  
CAUSE NO. 1318785-A IN THE 263RD DISTRICT COURT  
FROM HARRIS 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 injury to a child and sentenced to twenty years' imprisonment. The First Court of Appeals affirmed his conviction. *Holte v. State*, No. 01-12-00338-CR (Tex. App. — Houston [1<sup>st</sup> Dist.] October 1, 2013)(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 and failed to advise him of

his right to petition *pro se* for discretionary review. 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. In addition, the trial court has obtained copies of the mail logs from the prison unit where Applicant was confined during the applicable period. Based on the affidavit and the mail logs, the trial court has entered findings of fact and conclusions of law that although appellate counsel timely notified Applicant that his conviction had been affirmed and that he had the right to file petition for discretionary review *pro se*, Applicant never received the notification, due to a “breakdown in the system.” *See Ex parte Riley*, 193 S.W. 3d 900 (Tex. Crim. App. 2006).

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 Court of Appeals in Cause No. 01-12-00338-CR that affirmed his conviction in Cause No. 1318785 from the 263rd District Court of Harris 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: November 4, 2015  
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