



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-84,067-01

EX PARTE JAMES DAVIS MORRISON, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 2009CR7696 IN THE 379TH DISTRICT COURT
FROM BEXAR COUNTY**

Per curiam. Yeary, J., not participating.

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 capital murder and sentenced to life imprisonment. The Fourth Court of Appeals affirmed his conviction. *Morrison v. State*, No. 04-12-00744-CR (Tex. App. — San Antonio, July 30, 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. Applicant provides copies

of the mail logs from the prison unit where he was held during the applicable period, and those logs show that Applicant did not receive any legal mail from his appellate attorney during period when he could have filed a petition for discretionary review.

Appellate counsel was provided the opportunity to file an affidavit with the trial court, but failed to do so. 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. 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 Fourth Court of Appeals in Cause No. 04-12-00744-CR that affirmed his conviction in Cause No. 2009CR7696 from the 379th District Court of Bexar 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 11, 2015
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