



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-85,850-02

EX PARTE WILLIE DAN MAJORS III, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. F49961B IN THE 413TH DISTRICT COURT
FROM JOHNSON COUNTY**

Per Curiam. WALKER, 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 unlawful possession of a firearm by a felon and sentenced to seventeen years' imprisonment. The Tenth Court of Appeals dismissed his appeal for want of jurisdiction. *Majors v. State*, No. 10-16-00296-CR (Tex. App.—Waco Sep. 21, 2016) (not designated for publication).

Applicant, through habeas counsel, contends that he was denied his right to appeal because his appellate counsel, who is also habeas counsel, failed to file a timely notice of appeal. Counsel explains that he was on military deployment overseas, and this deployment prevented timely

communication between him and the appellate court, so notice of appeal was not timely. The State agrees that a late appeal should be granted, and the trial court recommends granting relief. *See Ex parte Riley*, 193 S.W.3d 900 (Tex. Crim. App. 2006); *Ex parte Axel*, 757 S.W.2d 369 (Tex. Crim. App. 1988).

Applicant is entitled to the opportunity to file an out-of-time appeal of the judgment of conviction in Cause No. F49961 from the 413th District Court of Johnson County. Applicant is ordered returned to that time at which he may give a written notice of appeal so that he may then, with the aid of counsel, obtain a meaningful appeal.

Within ten days of the issuance of this opinion, the trial court shall determine whether Applicant is indigent. If Applicant is indigent and wishes to be represented by counsel, the trial court shall immediately appoint an attorney to represent Applicant on direct appeal. All time limits shall be calculated as if the sentence had been imposed on the date on which the mandate of this Court issues. We hold that, should Applicant desire to prosecute an appeal, he must take affirmative steps to file a written notice of appeal in the trial court within 30 days after the mandate of this Court issues.

Copies of this opinion shall be sent to the Texas Department of Criminal Justice-Correctional Institutions Division and Pardons and Paroles Division.

Delivered: January 25, 2017
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