



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-86,839-01

EX PARTE WILLIE GUILLERMO TORRES, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. D-15-0230-SB-W-1 IN THE 391ST DISTRICT COURT
FROM TOM GREEN COUNTY**

Per curiam. Keasler, 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 possession of a controlled substance and sentenced to forty years' imprisonment. The Sixth Court of Appeals dismissed his appeal because notice of appeal was not timely filed. *Torres v. State*, No. 06-16-00182-CR (Tex. App.—Texarkana Nov. 8, 2016).

Applicant contends that he was denied his right to a direct appeal through no fault of his own. 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 and recommends that a late appeal be granted. The findings and recommendation are supported by the habeas record supplied to this Court. *See Ex parte Wilson*, 956 S.W.2d 25 (Tex. Crim. App. 1997); *Ex parte Riley*, 193 S.W.3d 900 (Tex. Crim. App. 2006); *Ex parte Axel*, 757 S.W.2d 369 (Tex. Crim. App. 1988).

Relief is granted. Applicant is entitled to the opportunity to file an out-of-time appeal of the judgment of conviction in Cause No. D-15-0230-SB from the 391st District Court of Tom Green 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: June 7, 2017
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