



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-89,475-01

EX PARTE ARIEL MARTINEZ, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 20110D00036-120-1 IN THE 120TH DISTRICT COURT
FROM EL PASO 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 one count of aggravated sexual assault of a child, one count of indecency with a child by contact, and one count of indecency with a child by exposure. He was sentenced to ninety-nine years' imprisonment for the aggravated sexual assault, twenty years' imprisonment for the indecency by contact, and ten years' imprisonment for the indecency by exposure, to run concurrently. The Eighth Court of Appeals affirmed his conviction. *Martinez v. State*, No. 08-12-00191-CR (Tex. App. — El Paso, 2014) (not designated for publication).

Applicant contends that his appellate counsel rendered ineffective assistance because counsel advised him that he would be filing a petition for discretionary review on his behalf, but after the petition submitted by counsel was rejected because of deficiencies, counsel did not remedy those deficiencies and no petition for discretionary review was filed before the appellate mandate issued.

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 file Applicant's petition for discretionary review, and thus failed to preserve Applicant's appellate rights. The trial court recommends that relief be granted.

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 Eighth Court of Appeals in Cause No. 08-12-00191-CR that affirmed his conviction in Cause No. 08-12-00191-CR from the 120th District Court of El Paso 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: February 13, 2019
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