



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-89,501-04

EX PARTE SANTOS CANALES, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. W97-52180-U (A) IN THE 291ST DISTRICT COURT
FROM DALLAS 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 pleaded guilty to murder in exchange for deferred adjudication community supervision. He was later adjudicated guilty and sentenced to ten years' imprisonment.

Applicant contends that his adjudication counsel rendered ineffective assistance because he failed to ascertain whether or not Applicant wanted to appeal, and then failed to timely file a notice of appeal after being asked to do so.

The trial court has determined that counsel failed to timely file a notice of appeal, despite

being asked either by Applicant himself, or by Applicant's sister on Applicant's behalf to do so. The trial court concludes that Applicant was deprived of his right to appeal through no fault of his own.

We find that Applicant is entitled to the opportunity to file an out-of-time appeal of the judgment of conviction in Cause No. F97-52180-U from the 291st District Court of Dallas 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: March 20, 2019
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