



**IN THE COURT OF CRIMINAL APPEALS
OF TEXAS**

NO. PD-0493-22

EX PARTE DELFINO MOLINA AYALA, JR., Appellant

**ON APPELLANT'S PETITION FOR DISCRETIONARY REVIEW
FROM THE THIRTEENTH COURT OF APPEALS
KLEBERG COUNTY**

Per curiam.

OPINION

Appellant was charged with possession of marihuana. Upon his guilty plea, the trial court deferred adjudication and placed him on community supervision for three years. Three years later, his supervision was terminated due to successful completion and the case was dismissed. He subsequently filed an application for writ of habeas corpus pursuant to Texas Code of Criminal Procedure Art. 11.072, and the trial court denied relief. Construing the application under Art. 11.07, the Court of Appeals dismissed the appeal for want of

jurisdiction. *Ayala v. State*, No. 13-22-00266-CR, 2022 Tex. App. LEXIS 612 (Tex. App. – Corpus Christi–Edinburg August 18, 2022).

Appellant has filed a petition for discretionary review arguing that the Court of Appeals erred to characterize his application as one pursuant to Art. 11.07 rather than Art. 11.072. We agree. Given that Appellant received community supervision and is not suffering from a final conviction, he properly filed his application under Art. 11.072, and an appeal was permitted. See *Ex parte Hiracheta*, 307 S.W.3d 323 (Tex. Crim. App. 2010); *Villanueva v. State*, 252 S.W.3d 391 (Tex. Crim. App. 2008).

We grant review of Appellant’s petition, vacate the judgment of the Court of Appeals, and remand this case to that court for proceedings consistent with this opinion.

DATE DELIVERED: November 2, 2022

DO NOT PUBLISH