



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. AP-76,718

EX PARTE PAUL RAY DESILETS, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 08-12-11262-CR IN THE 359th DISTRICT COURT
FROM MONTGOMERY 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 writ of habeas corpus. *Ex parte Young*, 418 S.W.2d 824, 826 (Tex. Crim. App. 1967). Applicant was convicted of two counts of intoxication assault and sentenced to five years' and six years' imprisonment, respectively. The Ninth Court of Appeals affirmed his conviction. *Desilets v. State*, No. 09-09-00375-CR (Tex. App.–Beaumont, delivered October 6, 2010).

Applicant contends that his appellate counsel rendered ineffective assistance because counsel failed to timely notify Applicant that his conviction had been affirmed and failed to advise him of

his right to petition for discretionary review *pro se*.

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 advise him of his right to petition for discretionary review *pro se*. The trial court recommends that relief be granted because of a “breakdown in the system” and that any error was without fault to counsel. However, counsel states in his affidavit that he “neglected to inform Mr. Desilets after [the appeal] was affirmed that he had thirty days to file a petition for discretionary review.” The record reflects that Applicant is entitled to relief, but not due to any breakdown in the system. *Ex parte Wilson*, 956 S.W.2d 25 (Tex. Crim. App. 1997). 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 Ninth Court of Appeals in Cause No. 09-09-00375-CR that affirmed his conviction in Case No. 08-12-11262-CR from the 359th Judicial District Court of Montgomery 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 1, 2012

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