



## IN THE COURT OF CRIMINAL APPEALS OF TEXAS

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NO. AP-76,739

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EX PARTE BENJAMIN CHASE CAPPS, Applicant

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ON APPLICATION FOR A WRIT OF HABEAS CORPUS  
CAUSE NO. 39,504-A IN THE 188TH DISTRICT COURT  
FROM GREGG COUNTY

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*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 felony DWI, enhanced with a prior felony conviction, and was sentenced to twenty years' imprisonment.

Applicant contends his trial counsel's representation denied him the opportunity to prosecute a direct appeal from this conviction and sentence. Trial counsel filed an affidavit

with the trial court regarding the claim, and based on the affidavit and applicable law, the trial court has entered findings of fact and recommends that Applicant be allowed the opportunity to pursue an out-of-time appeal. *See Ex parte Axel*, 757 S.W.2d 369 (Tex. Crim. App. 1988); *Ex parte Galvan*, 770 S.W.2d 822 (Tex. Crim. App. 1989); *Ex parte Crow*, 180 S.W.3d 135 (Tex. Crim. App. 2005).

We hold, therefore, that Applicant is entitled to the opportunity to file an out-of-time appeal of the judgment of conviction in Cause No. 39,504-A from the 188th District Court of Gregg 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.

Delivered: February 29, 2012  
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