



## IN THE COURT OF CRIMINAL APPEALS OF TEXAS

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NO. AP-76,780

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EX PARTE DAVID CARBAJAL, Applicant

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ON APPLICATION FOR A WRIT OF HABEAS CORPUS  
CAUSE NO. 20060D03759-168-1 IN THE 168<sup>TH</sup> JUDICIAL DISTRICT COURT  
FROM EL PASO 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 one count of attempted capital murder and one count of aggravated kidnapping and sentenced to ninety-nine years' imprisonment. The Eighth Court of Appeals affirmed his conviction. *Carbajal v. State*, No. 08-07-00149-CR (Tex. App. – El Paso, September 30, 2009).

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*. We remanded this application to the trial court for findings of fact and conclusions of law.

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 notify Applicant that his conviction had been affirmed and failed to advise him of his right to petition for discretionary review *pro se*. The trial court recommends that relief be granted. *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 Eighth Court of Appeals in Cause No. 08-07-00149-CR that affirmed his conviction in Cause No. 20060D03759 from the 168th Judicial 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: April 25, 2012  
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