



## IN THE COURT OF CRIMINAL APPEALS OF TEXAS

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NO. AP-76,786

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EX PARTE HUGO ISRAEL MARTINEZ, Applicant

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ON APPLICATION FOR A WRIT OF HABEAS CORPUS  
CAUSE NO. B-35,031-A IN THE 161<sup>ST</sup> JUDICIAL DISTRICT COURT  
FROM ECTOR 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 a writ of habeas corpus. *Ex parte Young*, 418 S.W.2d 824, 826 (Tex. Crim. App. 1967). Applicant was convicted of possession with intent to deliver a controlled substance and sentenced to sixteen years' imprisonment.

Applicant contends he was denied his right to appeal, because although trial counsel timely filed a motion for new trial and was subsequently permitted to withdraw, appellate counsel was not appointed until after the deadline for filing the notice of appeal. We remanded this application to the trial court for findings of fact and conclusions of law.

The trial court has determined that Applicant was denied the opportunity to appeal his conviction through no fault of his own. *See Ex parte Riley*, 193 S.W.3d 900 (Tex. Crim. App. 2006). We find that Applicant is entitled to the opportunity to file an out-of-time appeal of the judgment of conviction in Cause No. B-35,031-A from the 161st Judicial District Court of Ector 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: May 2, 2012  
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