



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. AP-76,799

EX PARTE MELVIN GLEN BENNER, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 08-02-01660-CR IN THE 410TH 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 a writ of habeas corpus. *Ex parte Young*, 418 S.W.2d 824, 826 (Tex. Crim. App. 1967). Applicant was convicted of possession of child pornography and sentenced to sixteen years' imprisonment. The Ninth Court of Appeals affirmed his conviction. *Benner v. State*, No. 09-08-00458-CR (Tex. App.–Beaumont July 7, 2010, pet. dism'd).

Applicant contends that he was denied his right to file a petition for discretionary review because appellate counsel's legal assistant calendered the wrong deadline. Appellate counsel's legal assistant filed an affidavit with the trial court. Based on that affidavit, the trial court has entered

findings of fact and conclusions of law and recommended that we grant relief.

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 case number 09-08-00458-CR that affirmed his conviction in cause number 08-02-01660-CR from the 410th 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.

Copies of this opinion shall be sent to the Texas Department of Criminal Justice-Correctional Institutions Division and Pardons and Paroles Division.

Delivered: May 16, 2012
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