



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. AP-76,812

EX PARTE BRANDON PAUL VILLAREAL, Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 2009-038A IN THE 421ST DISTRICT COURT
FROM CALDWELL 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 four counts of aggravated robbery and sentenced to fifty-five years' imprisonment. The Third Court of Appeals affirmed his conviction. *Villareal v. State*, No. 03-10-00352-CR (Tex. App. – Austin, June 15, 2010).

Applicant contends that his appellate counsel rendered ineffective assistance because counsel knew that Applicant wanted to pursue discretionary review, but filed a petition for discretionary review on Applicant's behalf two days after the filing deadline. This Court dismissed Applicant's

petition for discretionary review as untimely.

Appellate counsel filed this application on behalf of Applicant, and concedes that it was through counsel's oversight rather than through any fault of Applicant's that the petition for discretionary review was untimely filed. Based on the sworn allegations in the application, the trial court has entered findings of fact and conclusions of law that appellate counsel failed to timely file the petition for discretionary review, and that this failure denied Applicant the opportunity to prepare and file a timely petition for discretionary review. 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 Third Court of Appeals in Cause No. 03-10-00352-CR that affirmed his conviction in Cause No. 2009-038 from the 421st District Court of Caldwell 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: June 6, 2012

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