IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. AP-76,815

EX PARTE THOMAS CLEVELAND SMITH, Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 007-1835-05 IN THE 7TH DISTRICT COURT
FROM SMITH COUNTY

Per curiam.

O P I N I O N

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 aggravated assault and sentenced to fifteen years' imprisonment.

Applicant contends that his counsel rendered ineffective assistance because she failed to timely file a notice of appeal.

The trial court has determined that applicant was deprived of the right to appeal "due to no fault of his own." We find that Applicant is entitled to the opportunity to file an out-of-time appeal of the judgment of conviction in Cause No. 007-1835-05 from the 7th District Court of Smith

County. *Ex parte Riley*, 193 S.W.3d 900 (Tex. Crim. App. 2006). 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.

Copies of this opinion shall be sent to the Texas Department of Criminal Justice-Correctional

Institutions Division and Pardons and Paroles Division.

Delivered: June 13, 2012
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