



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. AP-76,838

EX PARTE RUDY GONZALES, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. W-20940-B-1 IN THE 181ST DISTRICT COURT
FROM RANDALL 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 driving while intoxicated and sentenced to fifty years' imprisonment. The Seventh Court of Appeals affirmed his conviction. *Gonzales v. State*, No. 07-10-0310-CR (Tex. App. - Amarillo, May 10, 2011).

Applicant contends that his appellate counsel rendered ineffective assistance because counsel failed to timely notify Applicant that his conviction had been affirmed. We remanded this application to the trial court for findings of fact and conclusions of law.

The supervisor of the Darrington Unit Mail Room, where Applicant was housed following

his conviction, 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. 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 Seventh Court of Appeals in Cause No. 07-10-00310-CR that affirmed his conviction in Cause No. 20940 from the 181st District Court of Randall 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: August 22, 2012
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