



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. AP-76,840

EX PARTE SCOTTY RAY BATES, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 29601-A IN THE 3rd DISTRICT COURT
FROM ANDERSON 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 theft and sentenced to two years' imprisonment.

Applicant contends that his trial counsel rendered ineffective assistance because he failed to timely advise the Applicant of his right to appeal. The Applicant further alleges that counsel's failure to advise him of his appellate rights caused him to miss the deadline for filing a notice of appeal and for appellate counsel to be untimely appointed by the trial court. We remanded this application to the trial court for findings of fact and conclusions of law.

The trial court, after conducting a live evidentiary hearing, has determined that Applicant was deprived of his right to appeal due to the ineffective assistance of his counsel. We find that Applicant is entitled to the opportunity to file an out-of-time appeal of the judgment of conviction in Cause No. 29601-A from the 3rd District Court of Anderson 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.

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

Delivered: August 22, 2012
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