



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. AP-76,898

EX PARTE JOSE LUIS JIMENEZ, Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 20080D02726-210-1 IN THE 210TH DISTRICT COURT
FROM EL PASO 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 sixteen years' imprisonment. The Eighth Court of Appeals affirmed his conviction. *Jimenez v. State*, No. 08-08-00347-CR (Tex. App. – El Paso, January 1, 2011).

Applicant contends that his appellate counsel rendered ineffective assistance because counsel failed to timely notify Applicant that his conviction had been affirmed and failed to advise him of his right to petition *pro se* for discretionary review. We remanded this application to the trial court for findings of fact and conclusions of law. Appellate counsel filed an affidavit with the trial court.

In his affidavit, appellate counsel states that a copy of the court of appeals' judgment was timely mailed to Applicant at his last known address. However, appellate counsel does not submit a copy of the letter or the return receipt, and does not state that he advised Applicant of his right to file a *pro se* PDR. Based on that affidavit, the trial court has entered findings of fact and conclusions of law that appellate counsel failed to comply with the requirements of Rule 48.4 of the Texas Rules of Appellate Procedure, and failed to notify Applicant "of his right to timely file a PDR." 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 Eighth Court of Appeals in Cause No. 08-08-00347-CR that affirmed his conviction in Cause No. 08-08-00347-CR from the 210th District Court of El Paso 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: October 31, 2012
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