



## IN THE COURT OF CRIMINAL APPEALS OF TEXAS

**NO. WR-77,014-01**

**EX PARTE ANCELVO GILAE LAMADRID-HOCK, Applicant**

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS  
CAUSE NO. 2005CR1764 IN THE 226TH DISTRICT COURT  
FROM BEXAR COUNTY**

*Per curiam.*

### **ORDER**

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 twenty years' imprisonment.

Applicant contends that his appellate counsel rendered ineffective assistance because his claims arising from a motion for new trial hearing, although briefed, could not be properly reviewed because counsel failed to have the hearing transcribed for the appellate record. He asks for a new appeal with the omitted transcript included. This Court's independent review of the record, which includes a copy of the omitted hearing transcript, shows that the outcome of the appeal would not have been different had the omitted transcription been included in the appellate record.

Trial counsel did not call any witness at the hearing and did not introduce any evidence, so the trial court had no basis upon which to grant a new trial. *See State v. Herndon*, 215 S.W.3d 901, 909 (Tex. Crim. App. 2007). The relevant issue on appeal was whether trial counsel was ineffective for failing to properly present the motion for new trial. *See Gilaelamadrid-Hock v. State*, No. 07-06-0295-CR (Tex. App.—Amarillo Jan. 16, 2008). Because there was no testimony at the motion for new trial hearing regarding counsel's reasons for not calling any witness or introducing evidence at that same hearing, the record on appeal was inadequate to address the ineffective assistance of counsel claim. *See Bone v. State*, 77 S.W.3d 828 (Tex. Crim. App. 2002). Applicant's request for a new appeal is therefore denied.

This Court notes that, should Applicant file another writ application concerning this conviction, that writ application would not be barred as a subsequent application under Code of Criminal Procedure Article 11.07, Section 4. Applicant has requested only a new appeal in this writ application and has not yet challenged the merits of this conviction. *See Ex parte McPherson*, 32 S.W.3d 860, 861 (Tex. Crim. App. 2000).

Filed: September 25, 2013

Do not publish