



**IN THE COURT OF CRIMINAL APPEALS
OF TEXAS**

NO. WR-77,090-01

EX PARTE MILTON DWAYNE GOBERT

**ON NOTICE OF UNTIMELY APPLICATION FOR WRIT OF HABEAS CORPUS
FILED IN CAUSE NO. D-1-DC-06-904006-A
IN THE 331ST DISTRICT COURT
TRAVIS COUNTY**

Per Curiam.

ORDER

This case is before us because an application for writ of habeas corpus has been untimely filed pursuant to the provisions of Texas Code of Criminal Procedure Article 11.071.¹

The trial court appointed John W. Stickels to represent applicant in a post-conviction

¹ Unless otherwise indicated all references to Articles refer to the Code of Criminal Procedure.

writ of habeas corpus under Article 11.071. On September 12, 2011, the State filed in this Court its brief on applicant's direct appeal. Pursuant to Article 11.071, §§ 4(a) and 4(b), and because a motion for extension was timely filed and granted, applicant's application for writ of habeas corpus was due in the convicting court on or before January 25, 2012. *See Ex parte Reynoso*, 257 S.W.3d 715 (Tex. Crim. App. 2008).

The writ application was untimely filed in the trial court on January 26, 2012. Pursuant to Article 11.071, § 4A(a), this Court could order counsel to show cause why he failed to file the application in a timely manner. However, immediately upon realizing that the application was delivered late, counsel contacted this Court and submitted a motion to file an out of time writ. The motion also set out counsel's reasons for the untimely filing. We accept that filing as counsel's showing of good cause.

In the motion, counsel stated that he delivered the completed writ application to Federal Express on January 24, 2012, for overnight shipping to the district clerk. Because of heavy storms in the Dallas/Fort Worth area that evening and flooding in the Austin area, Federal Express was apparently unable to complete the overnight delivery and delivered the application to the proper place a day later.

Because the circumstances were primarily outside of counsel's control, and because counsel was extremely diligent in alerting this Court to the problem, we find that he has shown good cause for his failure to timely file an application on applicant's behalf. The application shall be considered timely filed as of January 26, 2012, and the trial court is

ordered to proceed with its review of the application. The timelines set out in Article 11.071, §§ 6-9, shall start to run as of the day this order is issued.

IT IS SO ORDERED THIS THE 15TH DAY OF FEBRUARY, 2012.

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