



## IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-78,104-01

EX PARTE PAUL ALLEN, Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS  
CAUSE NO. W00-53134-U IN THE 291<sup>ST</sup> DISTRICT COURT  
FROM DALLAS 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). On October 26, 2000, Applicant pleaded guilty to aggravated assault with two prior sequential felony convictions, and received ten years' deferred adjudication community supervision. On November 12, 2004, he pleaded "true" to violating the terms of his community supervision, and was adjudicated guilty and sentenced to twenty-five years' imprisonment, the minimum sentence for the habitual felony offense to which he originally pleaded guilty. Applicant filed a *pro se* notice of appeal, and appellate counsel was appointed.

The sole issue raised on direct appeal was that the trial court's judgment reflected an incorrect date of the motion to adjudicate. The Fifth Court of Appeals affirmed the judgment as modified to reflect the correct date. *Allen v. State*, No. 05-06-00470-CR (Tex. App. – Dallas, July 10, 2006, *no pet.*).

In his application, Applicant alleges that appellate counsel was ineffective for failing to either raise errors which would lead to reversal of his conviction, or file an *Anders* brief and give him the opportunity to file a *pro se* response. The trial court made findings of fact and conclusions of law that were based on Applicant's allegations and an affidavit from appellate counsel. The trial court recommended that Applicant be granted an out-of-time appeal.

However, the trial court's conclusions of law and recommendation are not supported by the law applicable at the time of Applicant's appeal. The law in effect on the date upon which Applicant was adjudicated guilty did not allow for an appeal from the determination to proceed with adjudication. *See former* TEX. CODE. CRIM. PROC. Art. 42.12, Sec. 5(b)(2003). Applicant's appeal was limited to issues arising from the sentence after adjudication. In this case, Applicant pleaded "true" and received the minimum available sentence. Applicant does not allege what meritorious points of error could have been raised that would have resulted in the setting aside of his sentence. He fails to show that he was prejudiced by appellate counsel's failure to file an *Anders* brief. Therefore, we deny relief.

Filed: September 12, 2012  
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