

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-11-00638-CR

William Christopher Lloyd, Appellant

v.

The State of Texas, Appellee

**FROM THE DISTRICT COURT OF BELL COUNTY, 264TH JUDICIAL DISTRICT
NO. 68452, HONORABLE JOE CARROLL, JUDGE PRESIDING**

ORDER

PER CURIAM

Appellant William Christopher Lloyd seeks to appeal a judgment of conviction for possession of a controlled substance of one gram or more but less than four grams. On November 16, 2011, this Court dismissed the appeal for want of jurisdiction. The dismissal was based on the district court's signed certification indicating that this was a plea-bargain case and that Lloyd had no right of appeal. This Court's mandate issued on February 15, 2012.

On January 2, 2013, this Court received correspondence from the district court regarding the appeal. In the letter, the district court informs us that it is "trying to fix a problem caused by [its] error." According to the district court,

On September 1, 2011, I heard the punishment stage in the above case. It was not a plea bargain. However, the defendant signed and filed a Waiver of Appeal, which I accepted. Also, the defendant filed a signed certificat[ion] of no right of appeal which form recites that the case was a plea bargain. I mistakenly accepted and signed

the certificat[ion]. Subsequently, I told the defendant in open court, on the record, that I would give him permission to appeal.

He wrote me from prison on January 15, 2012, informing me he wanted to appeal and reminding me I had told him he could. My notes at the time reflect I researched his file and determined he was correct. I resolved to correct the error so he could appeal.

However, our plenary power over this appeal has expired, and we can no longer vacate or modify our judgment dismissing the appeal. *See* Tex. R. App. P. 19.1, 19.3. Lloyd's remedy must instead lie through an application for a post-conviction writ of habeas corpus seeking an out-of-time appeal. *See* Tex. Code Crim. Proc. Ann. art. 11.07 (West Supp. 2012).¹

It is ordered on January 11, 2013.

Before Chief Justice Jones, Justices Pemberton and Field

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¹ The application must be filed with the clerk of the court in which the conviction being challenged was obtained, and the clerk shall assign the application to that court. *See* Tex. Code Crim. Proc. Ann. art. 11.07, § 3 (West Supp. 2012). When the application is received by that court, a writ of habeas corpus, returnable to the Court of Criminal Appeals, shall issue by operation of law. *Id.* When a defendant obtains an out-of-time appeal by means of a writ of habeas corpus, the relief granted is to return the defendant to the point in the appellate process at which he can properly give notice of appeal and then perfect an appeal pursuant to the rules of appellate procedure. *Franks v. State*, 219 S.W.3d 494, 496 (Tex. App.—Austin 2007, pet. ref'd) (citing *Ex parte Garcia*, 988 S.W.2d 240, 241 (Tex. Crim. App. 1999)).