



## IN THE COURT OF CRIMINAL APPEALS OF TEXAS

---

---

NO. WR-80,751-01

---

---

**EX PARTE CHRYSSTOPHER DON PRECIADO, Applicant**

---

---

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS  
CAUSE NO. 60,196 IN THE 47TH DISTRICT COURT  
FROM POTTER 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 aggravated robbery and sentenced to forty years' imprisonment. The Seventh Court of Appeals affirmed his conviction. *Preciado v. State*, No. 07-10-00242-CR (Tex. App. – Amarillo, July 13, 2011).

Applicant contends that his appellate counsel rendered ineffective assistance because counsel failed to timely notify Applicant that his conviction had been affirmed. 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. Based on that affidavit, the trial court has entered findings of fact and conclusions of law that appellate counsel timely sent notification to Applicant that his conviction had been affirmed. However, based on the incoming mail logs for Applicant's prison unit during the applicable period, it appears that Applicant did not receive the notification until more than a year later.

In this case, there was a breakdown in the system, and due process requires that Applicant be permitted to exercise his statutory right to file a petition for discretionary review. *Ex parte Riley*, 193 S.W.3d 900 (Tex. Crim. App. 2006). 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 Seventh Court of Appeals in Cause No. 07-10-00242-CR that affirmed his conviction in Cause No. 60,196 from the 47th District Court of Potter 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 1, 2014  
Do not publish