



## IN THE COURT OF CRIMINAL APPEALS OF TEXAS

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NO. WR-81,086-01

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EX PARTE PHILLIP EDWARD JOHNSON, Applicant

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ON APPLICATION FOR A WRIT OF HABEAS CORPUS  
CAUSE NO. W-59,278-01-A IN THE 47TH DISTRICT COURT  
FROM POTTER COUNTY

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*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 possession with intent to deliver a controlled substance and sentenced to eighty years' imprisonment. The Seventh Court of Appeals affirmed his conviction. *Johnson v. State*, No. 07-11-00186-CR (Tex. App.—Amarillo 2013, no pet.).

Applicant contends that his appellate counsel rendered ineffective assistance because he 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 and other evidence in the record, the trial court made findings of fact and concluded that counsel was not ineffective.

We disagree. Counsel's manner of communication did not comply with *Ex parte Wilson*, 956 S.W.2d 25 (Tex. Crim. App. 1997). We find 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 number 07-11-00186-CR that affirmed his conviction in cause number 59,278-A 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: September 17, 2014  
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