



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-81,202-01

EX PARTE JOEL RAMIREZ, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. CR20713-A IN THE 35TH DISTRICT COURT
FROM BROWN 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). Applicant was convicted of tampering with or fabricating physical evidence and sentenced to forty-five years' imprisonment. The Eleventh Court of Appeals affirmed the conviction. *Ramirez v. State*, 11-11-00077-CR (Tex. App.—Eastland Feb. 7, 2013).

Applicant contends that he was denied his right, through no fault of his own, to pursue a *pro se* petition for discretionary review in this Court after his conviction was affirmed by the Eleventh Court of Appeals. Appellate counsel has a duty to timely inform an appellant of the appellate court's

decision and of his right to pursue discretionary review on his own. *Ex parte Crow*, 180 S.W.3d 135 (Tex. Crim. App. 2005); *Ex parte Wilson*, 956 S.W.2d 25 (Tex. Crim. App. 1997). Timely informing an applicant that his appeal had been affirmed without informing him of his right to pursue a PDR on his own is not sufficient. *Ex parte Florentino*, 206 S.W.3d 124 (Tex. Crim. App. 2006).

Applicant has alleged facts that, if true, might entitle him to relief. *Strickland v. Washington*, 466 U.S. 668 (1984). In these circumstances, additional facts are needed. As we held in *Ex parte Rodriguez*, 334 S.W.2d 294, 294 (Tex. Crim. App. 1960), the trial court is the appropriate forum for findings of fact. The trial court shall order appellate counsel to respond to Applicant's claim of ineffective assistance of counsel. The trial court may use any means set out in TEX. CODE CRIM. PROC. art. 11.07, § 3(d). If the trial court elects to hold a hearing, it shall determine whether Applicant is indigent. If Applicant is indigent and wishes to be represented by counsel, the trial court shall appoint an attorney to represent Applicant at the hearing. TEX. CODE CRIM. PROC. art. 26.04.

The trial court shall make findings of fact and conclusions of law as to whether Applicant's appellate counsel timely informed Applicant that his conviction had been affirmed and that Applicant could pursue a *pro se* petition for discretionary review. The trial court may also make any other findings of fact and conclusions of law that it deems relevant and appropriate to the disposition of Applicant's claim for habeas corpus relief.

This application will be held in abeyance until the trial court has resolved the fact issues. The issues shall be resolved within 90 days of this order. A supplemental transcript containing all affidavits and interrogatories or the transcription of the court reporter's notes from any hearing or deposition, along with the trial court's supplemental findings of fact and conclusions of law, shall

be forwarded to this Court within 120 days of the date of this order. Any extensions of time shall be obtained from this Court.

Filed: May 7, 2014
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