



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-81,361-02

EX PARTE KENNETH GERHART ANDREW, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 1058171-A IN THE 177TH DISTRICT COURT
FROM HARRIS 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 sexual assault and sentenced to thirty-five years' imprisonment. The Fourteenth Court of Appeals affirmed his conviction. *Andrew v. State*, No. 14-07-00241-CR (Tex. App.—Houston [14th Dist.] 2009, no pet.).

Applicant contends that appellate counsel failed to timely notify him that his conviction had been affirmed. The trial court has entered findings of fact and conclusions of law that appellate

counsel failed to timely notify Applicant that his conviction had been affirmed. The trial court recommends that relief be granted. *Ex parte Wilson*, 956 S.W.2d 25 (Tex. Crim. App. 1997).

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 Fourteenth Court of Appeals in cause number 14-07-00241-CR that affirmed his conviction in cause number 1058171 from the 177th District Court of Harris 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 24, 2014

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