



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-82,182-01

EX PARTE ROBERT TRACY WATERFIELD, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. F10-61655-Y
IN THE CRIMINAL DISTRICT COURT NO. 7
FROM DALLAS 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 of a child and sentenced to life imprisonment. The Fifth Court of Appeals affirmed his conviction. *Waterfield v. State*, No. 05-12-00646-CR (Tex. App.—Dallas Jul. 31, 2013) (not designated for publication).

Applicant contends that his appellate counsel rendered ineffective assistance because counsel failed to timely notify Applicant that his conviction had been affirmed and failed to advise him of

his right to petition *pro se* for discretionary review. We remanded this application to the trial court for supplemental 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 failed to timely notify Applicant that conviction had been affirmed and failed to advise of right to petition for discretionary review *pro se*. 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 Fifth Court of Appeals in Cause No. 05-12-00646-CR that affirmed his conviction in Cause No. F10-61655-Y from Criminal District Court No. 7 of Dallas 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: August 26, 2015
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