



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-82,574-01

EX PARTE JOHN C. THEUS, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 1070888 IN THE 263RD 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 murder and sentenced to life imprisonment. The First Court of Appeals affirmed his conviction. *Theus v. State*, No. 01-08-00284-CR (Tex. App. — Houston [1st Dist.] July 2, 2009).

Applicant contends that his appellate counsel rendered ineffective assistance because counsel failed to advise him of his right to file a *pro se* petition for discretionary review. 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 attempted to advise Applicant of his right to file

a *pro se* petition for discretionary review, but that Applicant did not receive the notification. The trial court recommends that relief be granted.

We find, therefore, that Applicant was denied his opportunity to petition this Court for discretionary review due to a breakdown in the system. *See Ex parte Riley*, 193 S.W.3d 900 (Tex. Crim. App. 2006). Applicant is entitled to the opportunity to file an out-of-time petition for discretionary review of the judgment of the First Court of Appeals in Cause No. 01-08-00284-CR that affirmed his conviction in Cause No. 1070888 from the 263rd 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: January 14, 2015
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