



## IN THE COURT OF CRIMINAL APPEALS OF TEXAS

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NO. WR-82,993-01

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EX PARTE JAMES ALAN WHIDDON, Applicant

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ON APPLICATION FOR A WRIT OF HABEAS CORPUS  
CAUSE NO. 04-08-13776-A-BCCR IN THE 220TH DISTRICT COURT  
FROM BOSQUE 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 aggravated assault on a police officer and sentenced to thirty-five years' imprisonment. The Tenth Court of Appeals affirmed his conviction. *Whiddon v. State*, No. 10-06-00085-CR (Tex. App.—Waco Feb. 7, 2007) (not designated for publication).

Applicant contends, *inter alia*, 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 failed to advise Applicant of

his right to file a *pro se* petition for discretionary review, stating “Applicant’s appellate counsel failed to effectively preserve Applicant’s right to file a PDR.” *See Ex parte Wilson*, 956 S.W.2d 25 (Tex. Crim. App. 1997). The trial court also rejected the State’s affirmative defense of laches. *See Ex parte Perez*, 445 S.W.3d 719 (Tex. Crim. App. 2014). The findings are supported by the habeas record and are adopted by this Court.

Applicant is entitled to the opportunity to file an out-of-time petition for discretionary review of the judgment of the Tenth Court of Appeals in Cause No. 10-06-00085-CR that affirmed his conviction in Cause No. 10-06-00085-CR from the 220th District Court of Bosque 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: June 03, 2015  
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