



## IN THE COURT OF CRIMINAL APPEALS OF TEXAS

**NO. WR-83,555-01**

**EX PARTE WILLIAM MARK RHODES, Applicant**

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS  
CAUSE NO. 1259408-A IN THE 248TH 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 entered an open plea of guilty to burglary of a habitation with intent to commit assault, and originally received deferred adjudication from the trial court. His guilt was later adjudicated, and he was sentenced to six years' imprisonment.

Applicant contends, among other things,<sup>1</sup> that he was denied his right to appeal because of

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<sup>1</sup>This Court has reviewed Applicant's other claims and finds them to be without merit.

various errors on the part of his original plea counsel, his counsel at adjudication, the trial court and the prosecutor. Applicant's plea counsel and adjudication counsel have both submitted affidavits responding to Applicant's allegations.

The written admonishments signed and initialed by Applicant in connection with his original plea contain contradictory information regarding Applicant's right to appeal. Because Applicant entered an open plea without an agreed recommendation, he should have retained his right to appeal. According to plea counsel's affidavit, Applicant was advised at the time he entered his plea that he had the right to appeal, but he did not indicate a desire to appeal when he was placed on deferred adjudication community supervision.

When Applicant was adjudicated guilty and sentenced, he retained the right to appeal from the adjudication and sentence imposed after adjudication. However, adjudication counsel's affidavits contain contradictory information regarding whether or not he advised Applicant of his right to appeal and the need for him to timely file notice of appeal should he desire to appeal after adjudication. Adjudication counsel states that Applicant did not indicate to him that he wanted to appeal, but this is not dispositive of the issue if Applicant was not aware that he had such a right. *See Ward v. State*, 740 S.W.2d 794, 798 (Tex. Crim. App. 1987) ("While the defendant must manifest his desire to appeal, this presupposes that the defendant has been apprised of his right to an appeal.").

Adjudication counsel also points out in his affidavits that the judgment adjudicating guilt contains a notation that appeal had been waived and that no permission to appeal had been granted. The trial docket also contains this notation. The notation may have been the result of the errors in the written admonishments from the original plea, but the record does not show that Applicant

knowingly waived his right to appeal.

We find that Applicant is entitled to the opportunity to file an out-of-time appeal limited to the adjudication of guilt and the sentence imposed after adjudication in Cause No. 1259408-A from the 248th District Court of Harris County. Applicant is ordered returned to that time at which he may give a written notice of appeal so that he may then, with the aid of counsel, obtain a meaningful appeal. Within ten days of the issuance of this opinion, the trial court shall determine whether Applicant is indigent. If Applicant is indigent and wishes to be represented by counsel, the trial court shall immediately appoint an attorney to represent Applicant on direct appeal. All time limits shall be calculated as if the sentence had been imposed on the date on which the mandate of this Court issues. We hold that, should Applicant desire to prosecute an appeal, he must take affirmative steps to file a written notice of appeal in the trial court within 30 days after the mandate of this Court issues.

Copies of this opinion shall be sent to the Texas Department of Criminal Justice-Correctional Institutions Division and Pardons and Paroles Division.

Delivered: March 23, 2016  
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