



## IN THE COURT OF CRIMINAL APPEALS OF TEXAS

**NO. WR-86,728-01**

**EX PARTE KEITH ELLIOT WOOD, Applicant**

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS  
CAUSE NO. 20161-B IN THE 104<sup>TH</sup> DISTRICT COURT  
FROM TAYLOR COUNTY**

*Per curiam.* KEASLER, J., not participating.

### 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 possession of methamphetamine and sentenced to two years' state jail years' imprisonment. His appeal was dismissed for want of jurisdiction. *Wood v. State*, No. 11-16-00305-CR (Tex. App.—Eastland Dec. 15, 2016) (not designated for publication).

Applicant contends that his counsel rendered ineffective assistance because he failed to timely file a notice of appeal and did not pursue suppression of evidence.

The trial court has determined that counsel reasonably construed Applicant's post-sentencing letter as requesting counsel's opinion about the merits of a motion for new trial or appeal, and that counsel's failure to perfect appeal was not error.

The record shows that Applicant wrote counsel within thirty days after sentencing asking counsel, among other things, to "please put in for a retrial and come talk to me and let me know what my chances are." When counsel realized that Applicant had been moved from the county jail, he wrote Applicant a letter recommending against pursuing a new trial or an appeal. Applicant wrote a second letter that did not include the specific requests, but did not abandon them, either. The record does not support the finding that Applicant abandoned his appeal within the time to perfect appeal.

The lawyer should take whatever steps are necessary to protect the defendant's right of appeal. *See Ex parte Axel*, 757 S.W.2d 369, 375 (Tex. Crim. App. 1988) (quoting ABA standards). If the defendant decides to appeal, trial counsel must ensure that written notice of appeal is filed with the trial court. *Jones v. State*, 98 S.W.3d 700, 703 (Tex. Crim. App. 2003). We find that Applicant is entitled to the opportunity to file an out-of-time appeal of the judgment of conviction in Cause No. 20161-B from the 104<sup>th</sup> District Court of Taylor 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.

Applicant's remaining claim is dismissed. *Ex Parte Torres*, 943 S.W.2d 469 (Tex. Crim. App. 1997).

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

Delivered: June 7, 2017  
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