



# IN THE COURT OF CRIMINAL APPEALS OF TEXAS

**NO. WR-87,085-01**

**EX PARTE RUTHEN JAMES WEEMS, Applicant**

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS  
CAUSE NO. 2015-229-C2A IN THE 54TH DISTRICT COURT  
FROM MCLENNAN 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 one count of aggravated assault and one count of unlawful possession of a firearm by a felon. He was sentenced to life imprisonment for the aggravated assault count and ten years' imprisonment for the unlawful possession of firearm by a felon count, to run concurrently. The Tenth Court of Appeals dismissed his direct appeal because both the notice of appeal and the motion for an extension of time were untimely filed. *Weems v. State*, No. 10-17-00099-CR (Tex. App. — Waco, April 26, 2017) (not

designated for publication).

Applicant contends that he was denied his right to appeal because appellate counsel failed to timely file a notice of appeal, and initially filed the motion for an extension only in the trial court, rather than in the appellate court as required by Rule 26.3(b) of the Texas Rules of Appellate Procedure. This habeas application was filed on Applicant's behalf by his appellate attorney, who concedes that he failed to timely file notice of appeal, and failed to properly and timely file the motion for an extension of time.

The trial court has determined that Applicant is entitled to relief. We find that Applicant is entitled to the opportunity to file an out-of-time appeal of the judgment of conviction in Cause No. 2015-229-C2A from the 54th District Court of McLennan 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: August 23, 2017  
DO NOT PUBLISH