



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-85,782-01

EX PARTE GUADALUPE CALDERON III, Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 11-CR-2664-G IN THE 319TH DISTRICT COURT
FROM NUECES 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 aggravated assault and sentenced to twenty years' imprisonment. The Thirteenth Court of Appeals affirmed his conviction. *Calderon v. State*, No. 13-11-00603-CR (Tex. App.—Corpus Christi Aug. 16, 2012) (not designated for publication).

Applicant contends that appellate counsel failed to advise him of his right to file a *pro se* petition for discretionary review (PDR).

We remanded this application to the trial court for findings of fact and conclusions of law. Appellate counsel filed an affidavit with the trial court, and the trial court held a live evidentiary hearing. Based on that affidavit and testimony at the hearing, 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* PDR. The trial court recommends that relief be granted. *Ex parte Wilson*, 956 S.W.2d 25 (Tex. Crim. App. 1997).

We find, therefore, that Applicant is entitled to the opportunity to file an out-of-time PDR of the judgment of the Thirteenth Court of Appeals in cause number 13-11-00603-CR that affirmed his conviction in cause number 11-CR-2664-G from the 319th District Court of Nueces County. Applicant shall file his PDR with this Court within 30 days of the date on which this Court's mandate issues.

Delivered: February 28, 2018
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