



## IN THE COURT OF CRIMINAL APPEALS OF TEXAS

**NO. WR-87,006-01**

**EX PARTE GERARDO ECHAVARRIA, JR., Applicant**

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS  
CAUSE NO. 09-CR-112-A IN THE 229th DISTRICT COURT  
FROM STARR 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 murder and sentenced to fifty years' imprisonment. The Fourth Court of Appeals affirmed his conviction. *Echavarría v. State*, 362 S.W.3d 148 (Tex. App.—San Antonio 2011).

Applicant contends that his appellate counsel rendered ineffective assistance at his motion for new trial hearing when he failed to properly raise a claim that, after the venire panel was asked during voir dire if anyone had a family member who had been a victim of violent crime, a juror in

this case knowingly failed to disclose that his father had been a murder victim only three years previously. Applicant alleges counsel knew of this claim, failed to perform any investigation, and admitted at the motion for new trial hearing that he had not filed verified pleadings and had not been able to develop a record for a new trial.

The trial court, after conducting a live evidentiary hearing, has determined that appellate counsel rendered ineffective assistance in this case. We agree.

We find that Applicant is entitled to the opportunity to file an out-of-time appeal of the judgment of conviction in Cause No. 09-CR-112-A from the 229th District Court of Starr 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.<sup>1</sup> 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: June 6, 2018  
Do not publish

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<sup>1</sup> This also puts Applicant within the time frame to file a motion for new trial.