



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-87,258-01

EX PARTE JUSLET JOSEPH, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. W-71461-01-B-WR IN THE 181ST DISTRICT COURT
FROM POTTER COUNTY**

Per curiam. **KELLER, P.J., filed a dissenting opinion in which YEARY, J., joined.**

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 of a family or household member and sentenced to twenty-five years' imprisonment.

Applicant alleges, among other things, that he was denied his right to a direct appeal of the conviction through no fault of his own. *See Ex parte Axel*, 757 S.W.2d 369 (Tex. Crim. App. 1988); *Jones v. State*, 98 S.W.3d 700 (Tex. Crim. App. 2003). Appellate counsel has provided an affidavit, and the trial court finds that appellate counsel did not inform Applicant, the trial court, nor the

appellate court of his withdrawal of representation. The trial court also finds that Applicant was constructively denied effective appellate counsel. The findings are supported by the habeas record and applicable law.

It is apparent from the face of the record that retained appellate counsel abandoned the appeal without formal notice to Applicant. Therefore, we find that Applicant is entitled to the opportunity to file an out-of-time appeal of the judgment of conviction in Cause No. 071461-B from the 181st District Court of Potter 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.

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. 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 claims are dismissed. *See Ex parte Torres*, 943 S.W.2d 469 (Tex. Crim. App. 1997).

Delivered: May 9, 2018
Do not publish