



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-87,426-01

EX PARTE STEVEN P CHERRY, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 2015CR6408-W1 IN THE 226TH DISTRICT COURT
FROM BEXAR 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 burglary of a habitation and sentenced to thirty years' imprisonment as a habitual felon. The Fourth Court of Appeals dismissed Applicant's appeal for want of jurisdiction. *Cherry v. State*, No. 04-16-00524-CR (Tex. App.—San Antonio Feb. 1, 2017).

Applicant requests a late appeal. The trial court finds that Applicant, through no fault of his own, was deprived of an opportunity to appeal the conviction "in spite of timely expressing his desire to do so." 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); *Ex parte Riley*, 193 S.W.3d 900 (Tex. Crim. App. 2006). The trial court recommends granting a late appeal. The findings and recommendation are supported by the habeas record.

Applicant is entitled to the opportunity to file an out-of-time appeal of the judgments of conviction in Cause No. 2015CR6408 from the 226th District Court of Bexar 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.

Filed: May 2, 2018

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