



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-87,715-01

EX PARTE RENE G. ESPINOZA, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 2011-431,685 IN THE 137TH DISTRICT COURT
FROM LUBBOCK 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 sexual assault of a child and sentenced to thirty years' imprisonment. The Seventh Court of Appeals affirmed his conviction. *Espinoza v. State*, No. 07-12-00060-CR (Tex. App. — Amarillo, July 30, 2012) (not designated for publication).

Applicant contends that he was denied his right to petition this Court for discretionary review, because his appellate counsel failed to timely notify Applicant that his conviction had been

affirmed and failed to advise him of his right to petition *pro se* for discretionary review.

Appellate counsel filed an affidavit with the trial court, in which he states that he was aware that Applicant wanted to pursue discretionary review, and that he intended to file a petition for discretionary review on Applicant's behalf. However, appellate counsel states that he did not advise Applicant of the court of appeals' decision, and inadvertently failed to file the petition for discretionary review, although he believed that he had done so. Appellate counsel did not realize that he had failed to timely file the petition until long after the deadline for doing so had passed. Appellate counsel also states that he does not recall advising Applicant of his right to pursue discretionary review *pro se*, and has no record of any letter advising Applicant of this right. Based on that affidavit, the trial court has entered findings of fact and conclusions of law that appellate counsel failed to timely notify Applicant that his conviction had been affirmed and failed to advise him of his right to petition for discretionary review *pro se*. 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 petition for discretionary review of the judgment of the Seventh Court of Appeals in Cause No. 07-12-00060-CR that affirmed his conviction in Cause No. 2011-431,685 from the 137th District Court of Lubbock County. Applicant shall file his petition for discretionary review with this Court within 30 days of the date on which this Court's mandate issues.

Delivered: April 11, 2018
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