



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-81,428-04

EX PARTE MARTIN MENDOZA, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. CR15-085 IN THE 4TH DISTRICT COURT
FROM RUSK COUNTY**

Per curiam. **KELLER, P.J., and KEASLER and SLAUGHTER, JJ., dissent.**

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 possessing a prohibited item in a correctional facility and sentenced to five years' imprisonment.

Applicant contends, among other things, that trial counsel failed to file a notice of appeal after he was convicted because counsel told him that he did not have a right to appeal the denial of his written pretrial motions. We remanded this application to the trial court for findings of fact and conclusions of law.

The trial court found or concluded that the court of appeals would have lacked jurisdiction

had Applicant appealed, trial counsel was not ineffective for not filing a notice of appeal, and Applicant's written acknowledgment in the certification of his right to appeal is evidence that he knowingly and voluntarily waived his right to appeal the trial court's denial of his pretrial motions so Applicant could enter into the plea agreement proposed by the State.

We conclude that Applicant is entitled to an out-of-time appeal limited only to the denial of his pretrial written motions that were filed and ruled on in cause number CR15-085 from the 4th District Court of Rusk 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 of the denial of his pretrial motions. 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 want to appeal the denial of his pretrial motions, he must take affirmative steps to file a written notice of appeal in the trial court within thirty 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: March 20, 2019

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