



## IN THE COURT OF CRIMINAL APPEALS OF TEXAS

**NO. WR-88,579-02**

**EX PARTE JOEL MAGAÑA, Applicant**

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS  
CAUSE NO. 2009CRN000331D1 IN THE 49TH DISTRICT COURT  
FROM WEBB 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 one count of murder and two counts of aggravated robbery and sentenced to seventy-five years' imprisonment for the murder and ten years' imprisonment for each of the aggravated robbery counts, to be served concurrently. The Fourth Court of Appeals reversed one of Applicant's aggravated robbery convictions, but affirmed the other two convictions. *Magaña v. State*, 351 S.W.3d 501 (Tex. App. — San Antonio 2011).

Applicant contends, among other things, that his appellate counsel rendered ineffective

assistance because 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. We remanded this application to the trial court for findings of fact and conclusions of law.

The trial court conducted a live habeas hearing at which Applicant, his mother and appellate counsel testified. Based on that testimony, 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 Fourth Court of Appeals in Cause No. 04-10-00120-CR that affirmed his conviction in Cause No. 2009CRN000331D1 from the 49th District Court of Webb 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.

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

Delivered: April 10, 2019  
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