



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-89,419-01

EX PARTE VICTOR MANUEL PALOMO, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 2009CRN001115D3 IN THE 341ST 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 one count of aggravated assault and sentenced to ninety-nine years' imprisonment for the murder count and twenty years' imprisonment for the aggravated assault count, to run concurrently.

Applicant contends that he was denied his right to appeal because neither trial counsel nor appellate counsel timely filed a notice of appeal, despite Applicant's stated desire to pursue an appeal. Due to misleading information contained in the clerk's record, Applicant's appointed

appellate counsel apparently believed that Applicant's trial counsel had filed notice of appeal on his behalf. In addition, Applicant retained a different appellate attorney who filed a notice of appearance one week after appellate counsel had been appointed. Although no order was entered by the court, appointed appellate counsel believed that retained appellate counsel had taken over the case, and ceased to do any further work at that time. Both appointed and retained appellate counsel apparently erroneously believed that notice of appeal had already been filed, and as a result, neither timely filed a notice of appeal.

The State agrees that Applicant was denied his right to appeal, and agrees that Applicant should be granted an out-of-time appeal. We find that Applicant is entitled to the opportunity to file an out-of-time appeal of the judgment of conviction in Cause No. 2009CRN001115D3 from the 341st District Court of Webb 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.