



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-89,466-01

EX PARTE KERRY C. SMITH, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. W14-39292-Q(A) IN THE 204TH DISTRICT COURT
FROM DALLAS 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 continuous sexual abuse of a child and sentenced to twenty-five years' imprisonment. The Fifth Court of Appeals affirmed his conviction. *Smith v. State*, No, 05-16-01069-CR (Tex. App.—Dallas Mar. 19, 2018) (not designated for publication).

Applicant contends that his appellate counsel rendered ineffective assistance because counsel did not timely notify Applicant that his conviction had been affirmed.

Appellate counsel filed an affidavit with the trial court. Based on that affidavit, the trial court

has entered findings of fact and conclusions of law that Applicant did not receive notice of the appellate decision through no fault of his own. The trial court recommends that relief be granted. *Ex parte Riley*, 193 S.W.3d 900 (Tex. Crim. App. 2006).

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 Fifth Court of Appeals in Cause No. 05-16-01069-CR that affirmed his conviction in Cause No. F-1439292-Q from the 204th District Court of Dallas 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: February 27, 2019
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