



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-89,526-01

EX PARTE EARL DAVIS WILLIAMS, JR., Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 16CR-077-1 IN THE 349TH DISTRICT COURT
FROM HOUSTON 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 two counts of aggravated assault on a public servant, one count of unlawful possession of a firearm by a felon, and one count of evading arrest. He was sentenced to fifty-five years on the aggravated assault counts, ten years on the possession of a firearm count, and seven years on the evading arrest count. The Twelfth Court of Appeals affirmed his conviction. *Williams v. State*, No. 12-16-00325-CR (Tex. App.—Tyler June 29, 2018)(not designated for publication).

Applicant contends that he was denied due process and denied his right to file a petition for

discretionary review when retained counsel filed a motion for extension of time to file in the wrong cause number. This Court granted an extension of time to file the petition for discretionary review on July 16, 2018. At that time, the Court stated that no further extensions would be entertained. When no petition was filed on the due date, the mandate issued in Applicant's appeal.

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 appellate counsel inadvertently filed a motion for extension of time in the wrong cause number. 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 Twelfth Court of Appeals in Cause No. 12-16-00325-CR that affirmed conviction in Cause No. 16CR-077 from the 349th District Court of Houston County. Applicant shall file petition for discretionary review with this Court within 30 days of the date on which this Court's mandate issues.

Filed: June 12, 2019
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