



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-90,049-01

EX PARTE JUAN RUBIO, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 2011CR3435-W1 IN THE 144TH DISTRICT COURT
FROM BEXAR COUNTY**

Per curiam. YEARY, J., not participating.

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 aggravated robbery and sentenced to forty years' imprisonment. The Fourth Court of Appeals affirmed his conviction. *Rubio v. State*, No. 04-13-00436-CR (Tex. App.—San Antonio April 2, 2014)(not designated for publication).

Applicant contends that his appellate counsel rendered ineffective assistance because counsel failed to advise him of his right to file a *pro se* petition for discretionary review.

Appellate counsel filed a response. Based on that response, the trial court has entered

findings of fact and conclusions of law that appellate counsel failed to advise Applicant of his right to file a *pro se* petition for discretionary review. 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. 04-13-00436-CR that affirmed his conviction in Cause No. 04-13-00436-CR from the 144th District Court of Bexar 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: July 24, 2019
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