



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-90,259-01

EX PARTE KERRY GITTENS, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 2015CR11181-W1 IN THE 226TH DISTRICT COURT
FROM BEXAR 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 murder and sentenced to fifty years' imprisonment. The Fourth Court of Appeals affirmed his conviction. *Gittens v. State*, 560 S.W.3d 725 (Tex. App. — San Antonio July 31, 2018).

Applicant contends 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.

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

appellate record, the trial court has entered findings of fact and conclusions of law, finding that appellate counsel failed to comply with the requirements of Rule 48.4 of the Texas Rules of Appellate Procedure. The record does not show that appellate counsel timely notified Applicant that his conviction had been affirmed and that he had a 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. 04-17-00230-CR that affirmed his conviction in Cause No. 2015CR11181 from the 226th 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: September 11, 2019
Do not publish