



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-91,412-01

EX PARTE OTIS SAMUEL MITCHELL, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 13-10-11074(1) IN THE 359TH DISTRICT COURT
FROM MONTGOMERY COUNTY**

Per curiam.

OPINION

Applicant was convicted of two counts of aggravated sexual assault and one count of aggravated kidnapping. He was sentenced to fifty years' imprisonment for the aggravated sexual assault counts and twenty-five years' imprisonment for the aggravated kidnapping count. The Ninth Court of Appeals affirmed his convictions. *Mitchell v. State*, Nos. 09-15-00162-CR, 09-15-00164-CR & 09-15-00164-CR (Tex. App.—Beaumont May 4, 2016) (not designated for publication). Applicant filed this application for a writ of habeas corpus in the county of conviction, and the district clerk forwarded it to this Court. *See* TEX. CODE CRIM. PROC. art. 11.07.

Applicant contends that appellate counsel failed to timely inform Applicant that his conviction had been affirmed and advise him of his right to file a *pro se* petition for discretionary review. Based

on the record, the trial court has determined that appellate counsel's performance was deficient and that Applicant would have timely filed a petition for discretionary review but for counsel's deficient performance.

Relief is granted. *Ex parte Wilson*, 956 S.W.2d 25 (Tex. Crim. App. 1997); *Ex parte Crow*, 180 S.W.3d 135 (Tex. Crim. App. 2005). Applicant may file an out-of-time petition for discretionary review of the judgments of the Ninth Court of Appeals in cause numbers 09-15-00162, 09-15-00163-CR, and 09-15-00164-CR. Should Applicant decide to file a petition for discretionary review, he must file it with this Court within thirty days from the date of this Court's mandate.

Copies of this opinion shall be sent to the Texas Department of Criminal Justice—Correctional Institutions Division and the Board of Pardons and Paroles.

Delivered: August 19, 2020
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