



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-91,487-01

EX PARTE JOHN WALTER RAYBON, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 51631-C-1 IN THE 89TH DISTRICT COURT
FROM WICHITA COUNTY**

Per curiam.

OPINION

Applicant was convicted of two counts of retaliation and sentenced to ten years' imprisonment on each count. The Second Court of Appeals affirmed his conviction. *Raybon v. State*, 02-12-00071-CR (Tex. App.—Ft. Worth, Aug. 15, 2013)(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 agreed to file a petition for discretionary review on Applicant's behalf, but miscalculated the deadline. Appellate counsel has signed an affidavit confirming Applicant's allegations. Based on the record, 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 judgment of the Second Court of Appeals in cause number 02-12-00071-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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