



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-40,402-02

EX PARTE FRANK PHILLIP MCNABB, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. CR18-0455-01 IN THE 415TH DISTRICT COURT
FROM PARKER COUNTY**

Per curiam.

OPINION

Applicant was convicted of possession of a controlled substance with intent to deliver more than four grams, less than two hundred grams, and sentenced to sixty-five years' imprisonment. The Seventh Court of Appeals affirmed his conviction. *McNabb v. State*, No. 07-19-00225-CR (Tex. App. — Amarillo, Aug. 12, 2020). 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 Applicant was not timely notified of the affirmance

of his conviction and was deprived of his right to file a petition for discretionary review, and, therefore, Applicant is entitled to an out-of-time petition for discretionary review.

Relief is granted. *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 Seventh Court of Appeals in cause number 08-19-00225-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: April 14, 2021
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