



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. AP-76,842

EX PARTE HERMAN GULLATT, JR., Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 31,934-CR IN THE 13TH DISTRICT COURT
FROM NAVARRO 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 possession of methamphetamine and sentenced to sixty years' imprisonment. The Tenth Court of Appeals affirmed his conviction. *Gullatt v. Texas*, 10-09-00244-CR, 2011 Tex. App. LEXIS 6807 (Tex. App.—Waco August 24, 2011)(published).

Applicant contends that his counsel rendered ineffective assistance because counsel, who was hired specifically to file a petition for discretionary review, failed to timely do so.

Counsel filed an affidavit with the habeas application. Counsel admits that he was hired by

Applicant to file a petition for discretionary review, but failed to timely do so. Applicant was denied his right to file a petition for discretionary review by relying on counsel. Relief should 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 Tenth Court of Appeals in Cause No. 10-09-00244-CR that affirmed his conviction in Cause No. 31,934-CR from the 13th District Court of Navarro 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: August 22, 2012

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