



## IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. AP-76,904

EX PARTE DONOVAN CHRISTOPHER LILLY, Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS  
CAUSE NO. 380-82642-08 IN THE 380<sup>TH</sup> DISTRICT COURT  
FROM COLLIN 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 aggravated assault and sentenced to four years' imprisonment. The Fifth Court of Appeals affirmed his conviction. *Lilly v. State*, No. 05-10-00349-CR (Tex. App.—Dallas Dec. 21, 2011).

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 stating that, though she mailed

Applicant notice that his conviction was affirmed and advised him of his right to file a pro-se PDR, she did not comply with Rule of Appellate Procedure 48.4. Applicant contends he never received any such notice. The trial court has entered findings of fact and conclusions of law that Applicant was deprived of his right to pursue a pro-se PDR through no fault of his own. The trial court recommends that relief be granted, and the State agrees. *Ex parte Riley*, 193 S.W.3d 900, 902 (Tex. Crim. App. 2006).

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 Fifth Court of Appeals in Cause No. 05-10-00349-CR that affirmed his conviction in Cause No. 380-82642-08 from the 380<sup>th</sup> District Court of Collin 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: October 31, 2012  
Do not publish