



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. AP-76,933

EX PARTE MICHAEL LYNN HENDERSON, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 2007-1731-C2A IN THE 54TH DISTRICT COURT
FROM MCLENNAN 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 murder and sentenced to sixty-five years' imprisonment. The Tenth Court of Appeals affirmed his conviction. *Henderson v. State*, No. 10-07-00394-CR (Tex. App. – Waco, August 26, 2009).

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. We remanded this application to the trial court for findings of fact and conclusions of law.

Appellate counsel is no longer eligible to practice law in Texas, and the prison mail room has filed an affidavit with the trial court, confirming that Applicant received no legal mail during the time period when he could have filed a PDR. Based on that affidavit, and on appellate counsel's disciplinary record with the State Bar, the trial court has entered findings of fact and conclusions of law that appellate counsel failed to timely notify Applicant that his conviction had been affirmed and failed to advise him of his right to petition for discretionary review *pro se*. The trial court recommends that relief 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. 10-07-00394-CR that affirmed his conviction in Cause No. 2007-1731-C2A from the 54th District Court of McLennan 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: December 19, 2012
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