



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. AP-76,934

EX PARTE ROLAND LEYBA, Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 2009-26-C2 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 aggravated robbery and sentenced to forty-five years' imprisonment. The Tenth Court of Appeals affirmed his conviction. *Leyba v. State*, No. 10-09-00337-CR (Tex. App.—Waco Oct. 12, 2011) (unpublished).

Applicant contends that his appellate counsel rendered ineffective assistance because counsel did not timely file a petition for discretionary review.

Appellate counsel filed an affidavit with the trial court. Based on that affidavit, the trial court has entered findings of fact and conclusions of law that appellate counsel failed to timely file a

petition for discretionary review.

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. 10-09-00337-CR that affirmed his conviction in Cause No. 2009-26-C2 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

Do not publish