



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. AP-76,951

EX PARTE RANDLE WAYNE PORTIS, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 2008-749-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 possession with intent to deliver a controlled substance and sentenced to twenty-five years' imprisonment. The Tenth Court of Appeals affirmed his conviction. *Portis v. State*, 10-09-00343-CR (Tex. App.—Waco Oct. 26, 2011) (unpublished).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. 10-09-00343-CR that affirmed his conviction in Cause No. 2008-749-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: January 16, 2013
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