



## IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. AP-76,965

EX PARTE XAVIER POWELL, Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS  
CAUSE NO. 48857 IN THE 268th DISTRICT COURT  
FROM FORT BEND 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 fifty years' imprisonment. The Fourteenth Court of Appeals affirmed his conviction. *Powell v. State*, No. 14-09-00398-CR (Tex. App.–Houston [14<sup>th</sup> Dist.], delivered April 21, 2011, no pet.).

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.

Based on the record in this case, 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 Fourteenth Court of Appeals in Cause No. 14-09-00398-CR that affirmed his conviction in Cause No. 48857 from the 268th District Court of Fort Bend 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: February 6, 2013  
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