



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. AP-76,969

EX PARTE WILLIE BERNARD CAMPBELL, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. W06-66409-V(A) IN THE 292ND DISTRICT COURT
FROM DALLAS 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 harassment of a public servant and sentenced to thirty-five years' imprisonment. The Fifth Court of Appeals affirmed his conviction. *Campbell v. State*, No. 05-08-00736 (Tex. App. - Dallas, July 14, 2009).

Applicant contends, *inter alia*, that his appellate counsel rendered ineffective assistance because counsel advised him that he would file a PDR on his behalf, but then failed to timely file the petition. Applicant's PDR was dismissed as untimely filed. We remanded this application to the trial court for findings of fact and conclusions of law.

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's failure to timely file the PDR was error, but not ineffective assistance of counsel. The trial court recommends that Applicant be afforded an out-of-time PDR.

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. 05-08-00736-CR that affirmed his conviction in Cause No. F06-66409-V from the 292nd District Court of Dallas 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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