



## IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-78,444-01

EX PARTE RUBEN DOMINGUEZ, Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS  
CAUSE NO. 1101710D IN THE 297th DISTRICT COURT  
FROM TARRANT COUNTY

*Per curiam.*

### ORDER

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-five years' imprisonment. The Second Court of Appeals affirmed his conviction. *Dominguez v. State*, No. 02-09-00264-CR (Tex. App.–Fort Worth, delivered May 12, 2011, pet. dism'd).

Applicant contends that his petition for discretionary review was improperly dismissed as untimely filed. Specifically, the Applicant alleges that he timely delivered his petition for

discretionary review to prison authorities for mailing on August 10, 2011.<sup>1</sup>

Applicant has alleged facts that, if true, might entitle him to relief. *Campbell v. State*, 320 S.W.3d 338 (Tex. Crim. App. 2010). In these circumstances, additional facts are needed. Pursuant to *Ex parte Rodriguez*, 334 S.W.2d 294, 294 (Tex. Crim. App. 1960), the trial court is the appropriate forum for findings of fact. The trial court shall order officials with the Texas Department of Criminal Justice to provide a response regarding the date Applicant's petition was delivered to prison authorities for mailing. The trial court may use any means set out in TEX. CODE CRIM. PROC. art. 11.07, § 3(d).

If the trial court elects to hold a hearing, it shall determine whether Applicant is indigent. If Applicant is indigent and wishes to be represented by counsel, the trial court shall appoint an attorney to represent Applicant at the hearing. TEX. CODE CRIM. PROC. art. 26.04.

The trial court shall make findings of fact and conclusions of law as to whether, under the mailbox rule, Applicant timely filed his petition for discretionary review in this cause. The trial court shall also make any other findings of fact and conclusions of law that it deems relevant and appropriate to the disposition of Applicant's claim for habeas corpus relief.

This application will be held in abeyance until the trial court has resolved the fact issues. The issues shall be resolved within 90 days of this order. A supplemental transcript containing all affidavits and interrogatories or the transcription of the court reporter's notes from any hearing or deposition, along with the trial court's supplemental findings of fact and conclusions of law, shall be forwarded to this Court within 120 days of the date of this order. Any extensions of time shall be obtained from this Court.

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<sup>1</sup> The Second Court of Appeals' on-line docket sheet reflects that the petition was filed on August 17, 2011.

Filed: October 10, 2012  
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