

11-10-024-CR



FILED
IN COURT OF APPEALS
ELEVENTH DISTRICT

FEB 11 2013

SHERRY WILLIAMSON, CLERK
By _____ Deputy

IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. AP-76,966

EX PARTE DANIEL SUBIA ORONA, Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. D-34,688-A IN THE 358TH DISTRICT COURT
FROM ECTOR 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 capital murder and sentenced to life imprisonment. The Eleventh Court of Appeals affirmed his conviction. *Orona v. State*, No. 11-10-00024-CR (Tex. App. – Eastland, November 10, 2011).

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. We remanded this application to the trial court for findings of fact and conclusions of law.

Appellate counsel filed written statement with the trial court. Based on that statement, 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 Eleventh Court of Appeals in Cause No. 11-10-00024-CR that affirmed his conviction in Cause No. D-34,688 from the 358th District Court of Ector 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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