IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. AP-75,978

EX PARTE JAVIER MADRID, Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS CAUSE NO. 20030D02109-346-1 IN THE 346TH DISTRICT COURT FROM EL PASO COUNTY

***Per curiam*.**

O P I N I O N

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 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 sixty (60) years' imprisonment. The Eight Court of Appeals affirmed his conviction. *Madrid v. State*, No AP-08-04-00279-CR (Tex. App.– El Paso, 2006, no pet.)(not designated for publication).

Applicant contends that his appellate counsel failed to timely notify him that his conviction had been affirmed and that he had a right to petition for discretionary review *pro se.*

On January 16, 2008, this Court remanded this application to the trial court to get an affidavit from counsel. In response to this order, the trial judge entered findings of fact and conclusions of law recommending that Applicant be granted an out-of-time petition for discretionary review.

Based on our review of the record, we find that Applicant was deprived of his right to file a petition for discretionary review *pro se. Ex parte Riley*, 193 S.W.3d 900 (Tex. Crim. App. 2006). We find that Applicant is entitled to the opportunity to file an out-of-time petition for discretionary review of the judgment of the Eighth Court of Appeals in Cause No. AP-08-04-00279-CR that affirmed his conviction in Case No. 20030D02109-346-1 from the 346th Judicial District Court of El Paso County. Applicant shall file his petition for discretionary review with the Eight Court of Appeals within 30 days of the date on which this Court's mandate issues.

Delivered: August 20, 2008
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