IN THE COURT OF CRIMINAL APPEALS
OF TEXAS

NO. AP-75,997

EX PARTE STEPHEN K. GILBERT, Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 05-00944-CRF-272-A IN THE 272ND JUDICIAL DISTRICT COURT
FROM BRAZOS 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 aggravated robbery and sentenced to thirty years' imprisonment. The Tenth Court of Appeals affirmed his conviction. Gilbert v. State , No. 10-06-00232-CR (Tex. App. – Waco, November 14, 2007).

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 for discretionary review *pro se.* 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 failed to timely notify Applicant that his conviction had been affirmed and failed to advise him of his right to petition for discretionary appeal *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 Tenth Court of Appeals in Cause No. 10-06-00232-CR that affirmed his conviction in Case No. 05-00944-CRF-272-A from the 272nd Judicial District Court of Brazos County. Applicant shall file his petition for discretionary review with the Tenth Court of Appeals within 30 days of the date on which this Court's mandate issues.

Delivered: September 10, 2008
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