# IN THE COURT OF CRIMINAL APPEALS OF TEXAS

**NO. AP-76,007**

**EX PARTE CHARLES ANTHONY COLBERT, Applicant**

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS CAUSE NO. 926096-A IN THE 177TH DISTRICT COURT FROM HARRIS 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 sixty years' imprisonment. The Fourteenth Court of Appeals affirmed his conviction. *Colbert v. State*, No. 14-06-1141-CR (Tex. App. - Houston [14th], delivered September 13, 2007, no pet.)

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.* 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*, because counsel never received notice of the affirmance from the court of appeals. 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 Fourteenth Court of Appeals in Cause No. 14-06-1141-CR that affirmed his conviction in Case No. 926096 from the 177th Judicial District Court of Harris County. Applicant shall file his petition for discretionary review with the Fourteenth Court of Appeals within 30 days of the date on which this Court's mandate issues.

Delivered: October 1, 2008
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