IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. AP-76,108

EX PARTE J.W. TATE, Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS CAUSE NO. 02-CR-1088-C IN THE 94TH DISTRICT COURT FROM NUECES 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 a writ of habeas corpus. *Ex parte Young*, 418 S.W.2d 824, 826 (Tex. Crim. App. 1967). Applicant was convicted of aggravated sexual assault of a child and sentenced to seventy-five years' imprisonment. Applicant's appeal was dismissed for want of jurisdiction. *Tate v. State*, No. 13-05-630-CR (Tex. App.–Corpus Christi, delivered February 9, 2006).

Applicant contends that his counsel rendered ineffective assistance because she failed to timely file a notice of appeal.

The trial court has determined that trial counsel failed to timely file a notice of appeal. We find, therefore, that Applicant is entitled to the opportunity to file an out-of-time appeal of the judgment of conviction in Cause No. 02-CR-1088-C from the Thirteenth Judicial District Court of Nueces County. Applicant is ordered returned to that time at which he may give a written notice of appeal so that he may then, with the aid of counsel, obtain a meaningful appeal. All time limits shall be calculated as if the sentence had been imposed on the date on which the mandate of this Court issues. We hold that, should Applicant desire to prosecute an appeal, he must take affirmative steps to file a written notice of appeal in the trial court within 30 days after the mandate of this Court issues.

Delivered: MARCH 11, 2009
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