IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. AP-76,154

EX PARTE GUY VAL QUAM, Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS CAUSE NO. 114-1821-05-A IN THE 114TH DISTRICT COURT FROM SMITH 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 sexual assault and sentenced to life imprisonment. The Twelfth Court of Appeals affirmed his conviction. *Quam v. State*, No. 12-06-186-CR (Tex. App. - Tyler, delivered April 25, 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. We remanded this application to the trial court for findings of fact and conclusions of law.

Appellate counsel testified that she mailed notice to Applicant that his appeal had been affirmed, but that he did not timely receive the notice because his address within the Texas Department of Criminal Justice, Criminal Institutions Division, was changed. The trial court has entered findings of fact and conclusions of law that Applicant did not receive timely notice that his conviction had been affirmed. The trial court recommends that relief be granted. *Ex parte Riley*, 193 S.W.3d 900 (Tex. Crim. App. 2007).

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 Twelfth Court of Appeals in Cause No. 12-06-186-CR that affirmed his conviction in Case No. 114-1821-05 from the 114th Judicial District Court of Smith County. Applicant shall file his petition for discretionary review with the Twelfth Court of Appeals within 30 days of the date on which this Court's mandate issues.

Delivered: May 20, 2009
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