



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. AP-76,178

EX PARTE JAMES WILLIAM HORNSBY, Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 84675 IN THE CRIMINAL DISTRICT COURT
FROM JEFFERSON 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 murder and sentenced to fifty years' imprisonment. The Ninth Court of Appeals affirmed his conviction. *Hornsby v. State*, No. 09-06-00273-CR (Tex. App.—Beaumont, Jan. 16, 2008, no pet.).

Applicant contends that he was denied an opportunity to file a petition for discretionary review *pro se*. The trial court made findings of fact and conclusions of law, specifically finding that there was no evidence that while in prison Applicant received appellate counsel's correspondence.

The trial court recommended that we grant Applicant an out-of-time petition for discretionary review. We agree. *Ex parte Riley*, 193 S.W.3d 900 (Tex. Crim. App. 2006). 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 Ninth Court of Appeals in Cause No. 09-06-00273-CR that affirmed his conviction in Case No. 84675 from the Criminal District Court of Jefferson County. Applicant shall file his petition for discretionary review with the Ninth Court of Appeals within 30 days of the date on which this Court's mandate issues.

Delivered: June 24, 2009
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