IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. AP-76,202

EX PARTE TOBY DEAN PHILLIPS, Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS CAUSE NO. W-51842-01-E IN THE 108th DISTRICT COURT FROM POTTER 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 failure to comply with sex offender registration requirements and sentenced to seven years' imprisonment. The Seventh Court of Appeals affirmed his conviction. *Phillips v. State*, No. 07-06-0118-CR (Tex. App.–Amarillo, delivered February 28, 2008, no pet.).

Applicant contends, *inter alia*, that his appellate counsel rendered ineffective assistance because counsel failed to advise him of his right to file 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 there is insufficient evidence to establish that counsel timely advised Applicant of his right to petition for discretionary review *pro se*. *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 Seventh Court of Appeals in Cause No. 07-06-00118-CR that affirmed his conviction in Cause No. W-51842-01-E from the 108th Judicial District Court of Potter County. Applicant shall file his petition for discretionary review with the Seventh Court of Appeals within 30 days of the date on which this Court's mandate issues.

All other claims are dismissed. *Ex parte Torres*, 943 S.W.2d 469 (Tex. Crim. App. 1997).

Delivered: August 26, 2009
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