IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. AP-76,200

EX PARTE WILLIAM MATTHEW SCHIFFERT, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 0825602A IN THE CRIMINAL DISTRICT COURT NUMBER ONE
FROM TARRANT 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 murder and sentenced to seventy-five years' imprisonment. The Second Court of Appeals affirmed his conviction. *Schiffert v. State*, 257 S.W.3d 6 (Tex. Crim. App. 2008).

Applicant's petition for discretionary review (PDR) was due at this Court on June 20, 2008. Applicant contends that he delivered his PDR to the prison mail room on June 19, 2008, but it was not received by this Court until June 26, 2008. This Court dismissed Applicant's PDR as untimely

filed. We remanded this application to the trial court for findings of fact and conclusions of law.

A representative from the mail room of the Clements Unit of TDCJ submitted an affidavit to respond to Applicant's claim. The representative for the mail room states that there is no record of legal mail being sent by Applicant to this Court for the period of June 16th to June 24, 2008, but that if Applicant had not properly sealed the correspondence, they would have processed the correspondence as general mail and would not have a record of such correspondence.

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 Second Court of Appeals in Cause No. 02-02-278-CR that affirmed his conviction in Case No. 0825602A from the criminal district court number one of Tarrant County. Applicant shall file his petition for discretionary review with the Second Court of Appeals within 30 days of the date on which this Court's mandate issues.

Delivered: August 26, 2009
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