IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. AP-76,216

EX PARTE FREDERICK VILLA, Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS CAUSE NO. 2005-1597-C2 IN THE 54TH DISTRICT COURT FROM MCLENNAN 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 35 years' imprisonment.

Applicant contends that his counsel rendered ineffective assistance because she failed to timely file a notice of appeal. We remanded this application to the trial court for findings of fact and conclusions of law.

The trial court has determined that there is no record of a notice of appeal being filed in this

case. The trial court found that Applicant was denied his right to a direct appeal through no fault of his own. 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. 2005-1597-C2 from the 54th Judicial District Court of McLennan 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: September 16, 2009
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