# IN THE COURT OF CRIMINAL APPEALS OF TEXAS

**NO. AP-76,208**

**EX PARTE THOMAS LEE WARD, Applicant**

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS CAUSE NO. 963737 IN THE 339th DISTRICT COURT FROM HARRIS 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 robbery and sentenced to thirty-five years' imprisonment. The First Court of Appeals affirmed his conviction. *Ward v. State*, No. 01-06-00119-CR (Tex. App.–Houston [1st Dist.], delivered March 1, 2007, pet. dism'd).

Applicant contends that his appellate counsel rendered ineffective assistance because counsel, who did file a petition for discretionary review on Applicant's behalf, failed to do so in a timely

manner.

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 appellate counsel failed to timely file a petition for discretionary review on Applicant's behalf, or notify him of his right to pursue a petition for discretionary review on his own. 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 First Court of Appeals in Cause No. 01-06-00119-CR that affirmed his conviction in Case No. 963737 from the 339th Judicial District Court of Harris County. Applicant shall file his petition for discretionary review with the First Court of Appeals within 30 days of the date on which this Court's mandate issues.

Delivered: September 16, 2009
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