IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. AP-76,231

EX PARTE DARRELL WAYNE PARKER, Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS CAUSE NO. 99009-A 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 writ of habeas corpus. *Ex parte Young*, 418 S.W.2d 824, 826 (Tex. Crim. App. 1967). Applicant was convicted of aggravated sexual assault of a child and sentenced to fifty years' imprisonment. The Ninth Court of Appeals affirmed his conviction. *Parker v. State*, No. 09-07-00480-CR (Tex. App. – Beaumont, October 15, 2008).

Applicant contends that his counsel retained to file a petition for discretionary review rendered ineffective assistance because counsel failed to timely file the petition, thereby denying Applicant his opportunity to seek discretionary review from this Court.

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 counsel failed to timely file Applicant's petition for discretionary review. 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 Ninth Court of Appeals in Cause No. 09-07-00480-CR that affirmed his conviction in Case No. 99009-A 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: September 23, 2009
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