IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-79,045-01

EX PARTE PAUL DOUGLAS GATES, Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS CAUSE NO. F-1045830-L IN CRIMINAL DISTRICT COURT NO. 5 FROM DALLAS 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 aggravated robbery and sentenced to forty-five years' imprisonment. The Fifth Court of Appeals affirmed his conviction. *Gates v. State*, No. 05-11-00404-CR (Tex. App.—Dallas 2012, no pet.).

Applicant contends that appellate counsel rendered ineffective assistance because counsel failed to advise him of his right to file a petition for discretionary review (PDR) and to timely notify him that his conviction had been affirmed. We remanded this application to the trial court for findings of fact and conclusions of law.

The trial court made findings and conclusions and recommended that we grant Applicant an out-of-time PDR. We agree. On this record, there was a breakdown in the system. *Ex parte Riley*, 193 S.W.3d 900, 902 (Tex. Crim. App. 2006). We find that Applicant is entitled to the opportunity to file an out-of-time PDR of the judgment of the Fifth Court of Appeals in case number 05-11-00404-CR that affirmed his conviction in cause number F-1045830-L from Criminal District Court No. 5 of Dallas County. Applicant shall file his petition for discretionary review with this Court within 30 days of the date on which this Court's mandate issues.

Delivered: June 5, 2013
Do not publish