IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-79,617-02

EX PARTE CHRISTOPHER JOHNSON, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 1171238-B IN THE 184th 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 a writ of habeas corpus. *Ex parte Young*, 418 S.W.2d 824, 826 (Tex. Crim. App. 1967). Applicant was convicted of capital murder and sentenced to life imprisonment. The First Court of Appeals affirmed his conviction. *Johnson v. State*, No. 01-11-00192-CR (Tex. App.—Houston [1st Dist.], delivered October 4, 2012, no pet.).

Applicant contends that his appellate counsel rendered ineffective assistance because counsel failed to timely notify him that his conviction had been affirmed and failed to advise him of his right to file a *pro se* petition for discretionary review.

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 notify Applicant that his conviction had been affirmed and failed to advise him of his right to file a *pro se* petition for discretionary review. The trial court recommends that relief be granted. *Ex parte Riley*, 193 S.W.3d 900 (Tex. Crim. App. 2006).

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. 01-11-00192-CR that affirmed his conviction in Cause No. 01-11-00192-CR from the 184th District Court of Harris 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 12, 2013
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