IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-78,629-03

EX PARTE GARY WAYNE TARVER, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. W11889-3 IN THE 355TH DISTRICT COURT
FROM HOOD 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 entered an open plea of guilty to driving while intoxicated, and was sentenced by a jury to twenty years' imprisonment.

Applicant contends that he was denied his right to appeal because his appellate counsel was not timely notified of his appointment. The trial court has determined that appellate counsel was not timely notified of his appointment, and that Applicant was denied his right to appeal as a result of this oversight. We find that Applicant is entitled to the opportunity to file an out-of-time appeal of the judgment of conviction in Cause No. CR11889 from the 355th District Court of Hood 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. Within ten days of the issuance of this opinion, the trial court shall determine whether Applicant is indigent. If Applicant is indigent and wishes to be represented by counsel, the trial court shall immediately appoint an attorney to represent Applicant on direct 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.

Copies of this opinion shall be sent to the Texas Department of Criminal Justice-Correctional Institutions Division and Pardons and Paroles Division.

Delivered: July 24, 2013
Do not publish