IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-79,218-01

EX PARTE PHILLIP LEO TORRES, JR., Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 3616-A IN THE 100TH DISTRICT COURT
FROM HALL 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 assault and sentenced to twenty years' imprisonment.

Applicant contends, *inter alia*, that he was denied his right to appeal through no fault of his own. *See Ex parte Axel*, 757 S.W.2d 369 (Tex. Crim. App. 1988); *Ex parte Wilson*, 956 S.W.2d 25 (Tex. Crim. App. 1997). The trial recommends granting relief, and its recommendation is supported by the writ record. Applicant is entitled to the opportunity to file an out-of-time appeal of the judgment of conviction in Cause No. 3616 from the 100th District Court of Hall 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. Applicant's remaining claims are dismissed without prejudice.

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
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