IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-66,244-02

EX PARTE LAFARRIS BORENS, Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS CAUSE NO. F-05-60566-R IN THE 265TH DISTRICT COURT 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 twenty-five years' imprisonment. The Fifth Court of Appeals affirmed his conviction. *Borens v. State*, No. 05-07-01516-CR (Tex. App.—Dallas Apr. 15, 2009) (unpublished).

Applicant contends that his appellate counsel rendered ineffective assistance because counsel failed to timely notify Applicant that his conviction had been affirmed and failed to advise him of his right to petition *pro se* for discretionary review. The trial court found that appellate counsel discharged his duties appropriately. We remanded this application to the trial court for findings of

fact and conclusions of law addressing Applicant's claim that he never received counsel's correspondence.

Based on an affidavit from the Texas Department of Criminal Justice, the trial court has entered findings of fact and conclusions of law that Applicant never received notice his conviction had been affirmed. The trial court recommends that relief be granted.

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 Fifth Court of Appeals in Cause No. 05-07-01516-CR that affirmed his conviction in Cause No. F-05-60566-R from the 265th District Court 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: August 21, 2013
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