IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-78,203-03

EX PARTE IRVIN RAY DAVIS, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 1193809 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 murder and sentenced to thirty-five years' imprisonment. The First Court of Appeals affirmed his conviction. *Davis v. State*, No. 01-10-00539-CR (Tex. App. - Houston [1st Dist.], October 20, 2011).

Applicant contends that his appellate counsel rendered ineffective assistance because counsel failed to advise him of his right to file a *pro se* petition for discretionary review. We remanded this application to the trial court for findings of fact and conclusions of law.

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 although appellate counsel did advise Applicant that he had the right to petition this Court for discretionary review, she did not advise Applicant that he could file a *pro se* petition for discretionary review. The trial court recommends that relief be granted. *Ex parte Wilson*, 956 S.W.2d 25 (Tex. Crim. App. 1997).

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. 01-10-00539-CR that affirmed his conviction in Cause No. 01-10-00539-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: August 21, 2013
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