IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-89,823-01

EX PARTE JUAN JIMENEZ, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 1408197-A IN THE 183RD 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. *Jimenez v. State*, No. 01-15-00783-CR (Tex. App. — Houston [1st Dist.] Dec. 15, 2016) (not designated for publication).

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.

Appellate counsel filed an affidavit with the trial court. Based on that affidavit and an affidavit from the Mail Room Assistant Supervisor from the unit where Applicant was imprisoned during the applicable period, 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 petition for discretionary review *pro se*.

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. 01-15-00783-CR that affirmed his conviction in Cause No. 1408197 from the 183rd District Court of Harris County. *Ex parte Wilson*, 956 S.W.2d 25 (Tex. Crim. App. 1997). 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: May 22, 2019
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