IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-80,044-02

EX PARTE KENDALE JAMES LEE, Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS CAUSE NO. 2013-CR-0038-Wl IN THE 175TH DISTRICT COURT FROM BEXAR COUNTY

***Per curiam*.**

O P I N I O N

Applicant pled nolo contendere to possession of a controlled substance with intent to deliver and was sentenced to ten years' imprisonment probated for eight years. His community supervision was later revoked and he was sentenced to eight years' imprisonment. Applicant filed this application for a writ of habeas corpus in the county of conviction, and the district clerk forwarded it to this Court. *See* TEX. CODE CRIM. PROC. art. 11.07.

Applicant contends that he was denied his right to an appeal because counsel failed to timely file a notice of appeal. Based on the record, the trial court has found that counsel failed to properly ascertain whether Applicant had the right to appeal and whether Applicant wished to appeal. The trial court recommends granting an out-of-time appeal.

We agree. Relief is granted. *Ex parte Axel*, 757 S.W.2d 369 (Tex. Crim. App. 1988); *Jones v. State*, 98 S.W.3d 700 (Tex. Crim. App. 2003). Applicant may file an out-of-time appeal of his conviction in cause number 2013CR0038 from the 175th District Court of Bexar County. Within ten days from the date of this Court's mandate, the trial court shall determine whether Applicant is indigent. If Applicant is indigent and wants to be represented by counsel, the trial court shall appoint counsel to represent him on direct appeal. Should Applicant decide to appeal, he must file a written notice of appeal in the trial court within thirty days from the date of this Court's mandate.

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

Delivered: February 28, 2024
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