IN THE COURT OF CRIMINAL APPEALS
OF TEXAS

NOS. WR-58,548-01 and WR-58,548-02

EX PARTE BILLY JOE WARDLOW, Applicant

ON APPLICATIONS FOR WRITS OF HABEAS CORPUS AND A MOTION FOR STAY OF EXECUTION IN CAUSE NO. CR12764 IN THE 76TH JUDICIAL DISTRICT COURT TITUS COUNTY

***Per curiam*.**

O R D E R

We have before us a subsequent post-conviction application for a writ of habeas corpus filed pursuant to the provisions of Texas Code of Criminal Procedure article 11.071 and a suggestion to reconsider Applicant's initial Article 11.071 writ application.[1] We also have before us a motion and supplemental motion for a stay of execution.

In February 1995, a jury found Applicant guilty of the 1993 capital murder of Carl

[1] Unless otherwise indicated, all references to Articles refer to the Texas Code of Criminal Procedure.

Cole. The jury answered the special issues submitted pursuant to Article 37.071, and the trial court, accordingly, set Applicant's punishment at death. This Court affirmed Applicant's conviction and sentence on direct appeal. *Wardlow v. State*, No. AP-72,102 (Tex. Crim. App. Apr. 2, 1997) (not designated for publication).

Applicant initially asked this Court to refrain from appointing him counsel for habeas and to immediately set an execution date for him.[2] However, in September 1997, Applicant entered into a legal representation agreement with attorney Mandy Welch in which she agreed to notify the appropriate courts that applicant did, in fact, wish to pursue his post-conviction remedies. After receiving confirmation from the trial court that Applicant did wish to pursue habeas relief, this Court in January 1998 appointed Welch as Applicant's habeas attorney and ordered that any application be filed in the convicting court no later than the 180th day after the date of the appointment.

On July 2, 1998, this Court again received correspondence from Applicant that he wanted to discontinue his appeal. In light of that request, we issued an order granting Applicant's request "to waive and forego all further appeals." *Ex parte Wardlow*, No. AP-72,102 (Tex. Crim. App. July 14, 1998) (not designated for publication). Despite this order, counsel timely filed Applicant's habeas application on July 20, 1998. The trial court reviewed the application and issued findings and conclusions on the seven claims raised therein. Upon receiving the application in this Court, we dismissed it for the

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[2] Under the version of Article 11.071 existing at that time, this Court appointed habeas counsel.

reasons stated in the order of July 14, 1998. *Ex parte Wardlow*, No. WR-58,548-01 (Tex. Crim. App. Sept. 15, 2004) (not designated for publication).

On December 3, 2019, Applicant filed in this Court a suggestion that this Court reconsider, on its own motion, its dismissal of Applicant's initial writ application. Having considered Applicant's pleadings and the evolution of Article 11.071 caselaw, we now reconsider that dismissal.

Applicant raises seven claims in his application. Specifically, he asserts that: his confession was obtained in violation of his Sixth Amendment right to counsel; he was deprived of the effective assistance of counsel on appeal and at trial; the State's pretrial plea bargain with his co-defendant deprived him of due process and a fair trial; the State's failure to disclose that the co-defendant's version of the events corroborated his second confession violated the dictates of *Brady v. Maryland*, 373 U.S. 83 (1963); and the admission of false testimony violated his due process rights and his right to the effective assistance of counsel. After reviewing Applicant's claims and the record of the case, we have determined that his claims should be denied.

Before filing in this Court his suggestion to reconsider his initial writ application, Applicant filed in the trial court his first subsequent writ application. Applicant raises two claims in his subsequent application. In the first, he complains that the State unknowingly presented false penalty phase testimony from Royce Smithey. In the second, he asserts that *Roper v. Simmons*, 543 U.S. 544 (2005), and ensuing Supreme

Court cases, together with recent scientific advances, preclude the use of the future dangerousness issue to determine death eligibility in a capital sentencing proceeding for offenders under 21 years old at the time of their crimes.

We have reviewed the application and find that the allegations do not satisfy the requirements of Article 11.071 § 5. Accordingly, we dismiss the application as an abuse of the writ without reviewing the merits of the claim raised. Art. 11.071 § 5(c). Accordingly, we deny his motion and supplemental motion for a stay of execution.

IT IS SO ORDERED THIS THE 29th DAY OF APRIL, 2020.

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