IN THE COURT OF CRIMINAL APPEALS
OF TEXAS

NO. AP-77,069

JOHN DAVID BATTAGLIA, Appellant

v.

THE STATE OF TEXAS

ON REVIEW OF AN ARTICLE 46.05 COMPETENCY TO BE EXECUTED HEARING FROM CAUSE NO. F01-52159-H IN CRIMINAL DISTRICT COURT NO. 1 DALLAS COUNTY

***Per curiam*.**

O R D E R

In April 2002, a jury found appellant guilty of capital murder for the shooting deaths of his two young daughters. The jury answered the special issues submitted pursuant to Texas Code of Criminal Procedure Article 37.071, and the trial court, accordingly, set appellant's punishment at death. This Court affirmed appellant's conviction and sentence on direct appeal. *Battaglia v. State*, No. AP-74,348 (Tex. Crim.

App. May 18, 2005)(not designated for publication).

In February 2005, appellant filed in the trial court his initial post-conviction application for writ of habeas corpus. This Court denied appellant relief. *Ex parte Battaglia*, No. WR-71,939-01 (Tex Crim. App. Sept. 23, 2009)(not designated for publication).

After federal habeas relief was denied, the trial court set an execution date for March 30, 2016. In February 2016, appellant sought the appointment of counsel in state court to investigate and present a claim that he was not competent to be executed. *See* TEX. CODE CRIM. PROC. art. 46.05. The trial court denied appellant's request. Appellant then filed for the appointment of counsel and a stay of execution in federal district court, which motion was also denied. *Battaglia v. Stephens*, No. 3:16-CV-0687-B (N.D. Tex. Mar. 18, 2016). On the day appellant was scheduled for execution, the Fifth Circuit Court of Appeals reversed the federal district court's decision and granted a stay of execution to allow new counsel time to develop an execution competency claim. *Battaglia v. Stephens*, 824 F.3d 470, 475-76 (5th Cir. 2016).

On July 28, 2016, appellant filed in the trial court a "Bare-Bones Motion to Determine Execution Competency under Article 46.05." The trial court appointed two experts to evaluate appellant. Additionally, appellant and the State each had an expert. The trial court later held a hearing at which all four experts and a lay witness testified. After reviewing the reports submitted by all four experts, the evidence presented during

the evidentiary hearing, and all pleadings and other materials filed in the case, the trial court found that appellant had not established by a preponderance of the evidence that he was incompetent to be executed. On motion of the parties, the record was forwarded to this Court for a review of that ruling.

After reviewing the record, this Court has determined that full briefing on the appeal is warranted in this case. Thus, briefs on the competency issue are due in this Court from both appellant and the State within 60 days of the date of this order. Appellant's execution is stayed pending further order from this Court.

IT IS SO ORDERED THIS THE 2ND DAY OF DECEMBER, 2016.

Do not publish