IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-79,322-02

EX PARTE BLAINE KEITH MILAM, Applicant

ON APPLICATION FOR POST-CONVICTION WRIT OF HABEAS CORPUS AND MOTION FOR STAY OF EXECUTION IN CAUSE NO. CR09-066 IN THE FOURTH JUDICIAL DISTRICT COURT RUSK COUNTY

***Per curiam*. RICHARDSON, J., filed a concurring opinion in which WALKER, J., joined. YEARY, J., filed a dissenting opinion. KELLER, P.J., and SLAUGHTER, J., dissent.**

O R D E R

We have before us a subsequent application for a writ of habeas corpus filed pursuant to the provisions of Texas Code of Criminal Procedure Article 11.071 § 5 and a motion to stay applicant's execution.[1]

In May 2010, a jury found applicant guilty of the December 2008 capital murder of

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

a thirteen-month-old child. The jury answered the special issues submitted pursuant to Article 37.071, and an issue asking if applicant was a person with mental retardation, and the trial court, accordingly, set applicant's punishment at death. This Court affirmed applicant's conviction and sentence on direct appeal. *Milam v. State*, No. AP-76,379 (Tex. Crim. App. May 23, 2012)(not designated for publication).

In his initial application for a writ of habeas corpus, applicant raised four allegations asserting various instances of ineffective assistance of his trial and appellate counsel. This Court reviewed the merits of the claims and denied relief. *Ex parte Milam*, No. WR-79,322-01 (Tex. Crim. App. Sept. 11, 2013)(not designated for publication).

Applicant's counsel filed this subsequent writ application in the trial court on January 7, 2019. Applicant raises four claims in the application. In the first claim, applicant asserts that current relevant scientific evidence related to the reliability of bite mark comparison contradicts expert testimony presented and relied upon at trial. In the second claim, applicant asserts that his execution would violate the Eighth and Fourteenth Amendments because he is intellectually disabled. In the third and fourth claims, applicant asserts that the State failed to disclose material exculpatory evidence, and he was denied his right to present a defense in violation of due process.

Because of recent changes in the science pertaining to bite mark comparisons and recent changes in the law pertaining to the issue of intellectual disability, we find that applicant has met the dictates of Article 11.071 § 5(a)(1) with regard to his first two

allegations. We therefore stay his execution and remand these claims to the trial court for a review of the merits of these claims.

IT IS SO ORDERED THIS THE 14th DAY OF JANUARY, 2019.

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