IN THE COURT OF CRIMINAL APPEALS
OF TEXAS

NO. WR-70,969-03

EX PARTE RAMIRO FELIX GONZALES, Applicant

ON APPLICATION FOR POST-CONVICTION WRIT OF HABEAS CORPUS AND MOTION FOR STAY OF EXECUTION FROM CAUSE NO. 04-02-09091-CR IN THE 454TH JUDICIAL DISTRICT COURT MEDINA COUNTY

***Per curiam*. KEEL and SLAUGHTER, JJ., 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 August 2006, a jury convicted Applicant of the January 2001 capital murder of

[1] All references to "Articles" in this order refer to the Texas Code of Criminal Procedure unless otherwise specified.

Bridget Townsend. *See* TEX. PENAL CODE § 19.03(a). Based on the jury's answers to the special issues submitted pursuant to Article 37.071, the trial court sentenced Applicant to death. This Court affirmed Applicant's conviction and sentence on direct appeal. *Gonzales v. State*, No. AP-75,540 (Tex. Crim. App. June 17, 2009) (not designated for publication).

We also denied relief on Applicant's initial habeas application. *Ex parte Gonzales*, No. WR-70,969-01 (Tex. Crim. App. Sept. 23, 2009) (not designated for publication). Because of "procedural variations," we later re-opened the case on our own motion, remanded it to the trial court, and ultimately denied relief again. *Ex parte Gonzales*, No. WR-70,969-01 (Tex. Crim. App. June 27, 2012) (not designated for publication). We dismissed his first subsequent habeas application as an abuse of the writ. *Ex parte Gonzales*, Nos. WR-70,969-01 and -02 (Tex. Crim. App. Feb. 1, 2012) (not designated for publication).

The trial court ultimately scheduled Applicant's execution for July 13, 2022. On June 30, 2022, Applicant filed the instant habeas application, in which he raises three claims. Specifically, Applicant asserts that: (1) the State presented at the punishment phase of Applicant's trial false and materially inaccurate expert testimony; (2) the State presented at punishment false testimony from a jail inmate; and (3) Applicant's death sentence violates the Eighth Amendment because there exists a national consensus that the death penalty is an excessive punishment for offenders less than twenty-one years old

at the time of the crime.

After reviewing the record, we have determined that a portion of Claim 1 meets the requirements of Article 11.071 § 5(a). In this claim, Applicant asserts that the State's trial expert, Dr. Edward Gripon, gave false testimony at trial because he has now reevaluated Applicant and determined that he is not a future danger. But the determination of future dangerousness is made at the time of trial and is not properly reevaluated on habeas. To the extent Applicant's first claim is such a reevaluation, the trial court shall not review it. However, Applicant has also presented at least a *prima facie* showing that testimony of recidivism rates Gripon gave at trial were false and that that false testimony could have affected the jury's answer to the future dangerousness question at punishment. This aspect of Claim 1 is remanded to the trial court for a merits' review. The remaining claims do not meet the requirements of Article 11.071 § 5(a) and should not be reviewed. Applicant's execution is stayed pending resolution of the remanded claim.

IT IS SO ORDERED THIS THE 11th DAY OF JULY, 2022.

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