IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-50,961-10

EX PARTE RODNEY REED, Applicant

ON APPLICATION FOR POST-CONVICTION WRIT OF HABEAS CORPUS AND MOTION TO STAY THE EXECUTION IN CAUSE NO. 8701 IN THE 21ST DISTRICT COURT BASTROP COUNTY

***Per curiam*. KEASLER, J., filed a concurring opinion in which HERVEY and RICHARDSON, JJ., joined. YEARY, J., filed a concurring and dissenting opinion in which WALKER and SLAUGHTER, JJ., joined. NEWELL, J., not participating.**

O R D E R

This is 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.

In May 1998, a jury convicted Applicant of the offense of capital murder. The jury answered the special issues submitted pursuant to Texas Code of Criminal Procedure

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. *Reed v. State*, No. AP-73,135 (Tex. Crim. App. Dec. 6, 2000) (not designated for publication). On November 15, 1999, Applicant filed his initial post-conviction application for a writ of habeas corpus in the convicting court. On February 8, 2001, Applicant filed a "Supplemental Claim for Relief on Application for Writ of Habeas Corpus" in the convicting court. This Court subsequently denied Applicant relief on his initial application and construed the supplemental claim as a subsequent application and dismissed it. *Ex parte Reed*, Nos. WR-50,961-01 and WR-50,961-02 (Tex. Crim. App. Feb. 13, 2002) (not designated for publication).

Applicant filed his second subsequent habeas application in the convicting court on March 29, 2005 (our No. WR-50,961-03). This Court remanded the case to the trial court for the development of two claims. After the case was returned to this Court, we issued an opinion denying relief. *Ex parte Reed*, 271 S.W.3d 698 (Tex. Crim. App. 2008). Over time, Applicant filed three more subsequent writ applications, none of which satisfied the requirements of Article 11.071 § 5, and this Court dismissed them. *Ex parte Reed*, Nos. WR-50,961-04 and WR-50,961-05 (Tex. Crim. App. Jan. 14, 2009) (not designated for publication), and No. WR-50,961-06 (Tex. Crim. App. July 1, 2009) (not designated for publication).

Applicant filed his sixth subsequent application in the trial court on February 13,

2015, and a document titled a "Supplemental Application for Writ of Habeas Corpus" on June 9, 2016. This Court found that Applicant's 2015 subsequent application (our No. WR-50,961-07) failed to satisfy any of the exceptions provided in Article 11.071 § 5, and it failed to make the requisite showing under Article 11.073. Accordingly, we dismissed the application. However, in the same order, we found that Applicant's *Brady* and false evidence claims raised in his 2016 subsequent application (our No. WR-50,961-08) met the requirements of Section 5, and we remanded those claims to the trial court. *Ex parte Reed*, Nos. WR-50,961-07 and WR-50,961-08 (Tex. Crim. App. May 17, 2017) (not designated for publication).

After the -08 application was returned to this Court, we reviewed all of the evidence and denied relief on the remanded claims (and dismissed the claims not remanded). In the same order, we dismissed a new subsequent writ application that Applicant had filed in the trial court in June 2018. *Ex parte Reed*, Nos. WR-50,961-08 and WR-50,961-09 (Tex. Crim. App. June 26, 2019) (not designated for publication).

On November 11, 2019, Applicant filed the instant subsequent writ application in the convicting court. Applicant raises four claims in this application: (1) that the State suppressed exculpatory evidence in violation of *Brady v. Maryland*, 373 U.S. 83 (1963); (2) that the State presented false testimony in violation of due process; (3) that Applicant's trial counsel were ineffective; and (4) that Applicant is actually innocent.

After reviewing the application, we find that Applicant's *Brady*, false testimony,

and actual innocence claims satisfy the requirements of Article 11.071 § 5. Accordingly, we remand those claims to the trial court for further development. We further find that the Honorable Doug Shaver continues to sit by assignment as the judge of 21st Judicial District Court of Bastrop County for Applicant's case. If Judge Shaver chooses to discontinue his assignment in this case, then the regional presiding judge, the Hon. Olen Underwood, shall appoint or otherwise determine who is assigned to this case. Applicant's execution is stayed pending further order of this Court.

IT IS SO ORDERED THIS THE 15th DAY OF NOVEMBER, 2019.

Do Not Publish