IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-63,081-04

EX PARTE ROBERT LESLIE ROBERSON, III, Applicant

ON APPLICATION FOR WRIT OF HABEAS CORPUS IN CAUSE NO. 26,162-B IN THE 3RD JUDICIAL DISTRICT COURT ANDERSON COUNTY

Per curiam.

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, Section 5, and an accompanying Motion to Stay Execution. *See* TEX. CODE CRIM. PROC. art. 11.071, § 5.

In February 2003, a jury found Applicant guilty of capital murder for the death of his two-year-old daughter, Nikki Curtis. *See* TEX. PENAL CODE § 19.03(a)(8). Based on the jury's answers to the special issues submitted pursuant to Texas Code of Criminal Procedure Article 37.071, the trial court sentenced Applicant to death. *See* TEX. CODE

CRIM. PROC. art. 37.071, § 2(g). On direct appeal, this Court affirmed Applicant's conviction and death sentence. *See Roberson v. State*, No. AP-74,671 (Tex. Crim. App. June 20, 2007) (not designated for publication).

In June 2009, this Court denied relief on Applicant's initial post-conviction application for a writ of habeas corpus. *See Ex parte Roberson*, Nos. WR-63,081-01 and WR-63,081-02 (Tex. Crim. App. Sept. 16, 2009) (not designated for publication). On the same day, this Court dismissed as a subsequent application a document titled "Notice of Desire to Raise Additional Habeas Corpus Claims." *See id.*

In June 2016, Applicant filed in the trial court a second subsequent application for writ of habeas corpus, raising four claims. This Court determined that his claims satisfied the requirements of Article 11.071, Section 5, and remanded the claims to the habeas court for resolution.[1] *See Ex parte Roberson*, No. WR-63,081-03 (Tex. Crim. App. June 16, 2016) (not designated for publication). The habeas court held an evidentiary hearing and thereafter made findings of fact and conclusions of law recommending that we deny habeas relief on all four of Applicant's claims. In January 2023, we denied habeas relief on all of Applicant's claims. *See Ex parte Roberson*, No. WR-63,081-03, (Tex. Crim. App. Jan. 11, 2023) (not designated for publication), *cert. denied sub nom. Roberson v. Tex.*, 144 S. Ct. 129 (2023). On July 1, 2024, the trial court entered an order setting Applicant's execution for October 17, 2024.

[1] At that time, we also granted Applicant's motion to stay his execution.

On August 1, 2024, Applicant filed in the trial court this third subsequent application for writ of habeas corpus and filed in this Court a motion to stay his execution. Applicant raises five claims, asserting that he is entitled to habeas relief because: (1) new evidence establishes that his conviction was obtained using false, misleading, and scientifically invalid testimony, *see Ex parte Chabot*, 300 S.W.3d 768 (Tex. Crim. App. 2009); *Ex parte Chavez*, 371 S.W.3d 200, 207 (Tex. Crim. App. 2012); (2) new medical and scientific evidence contradicts evidence of Shaken Baby Syndrome that the State relied on at trial, *see* TEX. CODE CRIM. PROC. art. 11.073; (3) his conviction is based on subsequently discredited medical opinions and thus violates his due process right to a fundamentally fair trial; (4) his trial attorneys violated his right to autonomy of his defense objective by overriding his explicit objective to maintain his innocence, *see McCoy v. Louisiana*, 584 U.S. 414 (2018); and (5) new medical and scientific evidence establishes that he is actually innocent, *see Herrera v. Collins*, 506 U.S. 390 (1993); *Ex parte Elizondo*, 947 S.W.2d 202 (Tex. Crim. App. 1996).

We have reviewed the application and find that the allegations do not satisfy the requirements of Article 11.071, Section 5. *See* TEX. CODE CRIM. PROC. art. 37.071, § 5(a). Accordingly, we dismiss the application as an abuse of the writ without reviewing the merits of the claims raised. *See id.* art. 37.071, § 5(c). We deny the motion to stay Applicant's execution.

IT IS SO ORDERED THIS THE 11th DAY OF SEPTEMBER, 2024.

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