



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-64,654-02

EX PARTE CHARLES DON FLORES, Applicant

**ON APPLICATION FOR POST-CONVICTION WRIT OF HABEAS CORPUS
IN CAUSE NO. F98-02133 IN THE 195TH JUDICIAL DISTRICT COURT
DALLAS COUNTY**

Per curiam.

ORDER

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.

In April 1999, a jury found applicant guilty 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. *Flores v. State*, No. AP-73,463 (Tex. Crim. App. Nov. 7, 2001)(not designated for publication). Applicant

filed his initial application for a writ of habeas corpus in the convicting court in September 2000, and he timely filed supplements to the application in December 2000. This Court subsequently denied relief on all of his claims. *Ex parte Flores*, No. WR-64,654-01 (Tex. Crim. App. Sept. 20, 2006)(not designated for publication).

On May 19, 2016, applicant filed in the trial court the instant first subsequent application for a writ of habeas corpus. Applicant presented four claims, one of which satisfied the requirements of Texas Code of Criminal Procedure Article 11.071, § 5:

Claim I	Applicant is entitled to relief because new scientific knowledge discredits the testimony of the only eyewitness to the crime.
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We remanded this claim to the trial court for consideration. *Ex parte Flores*, No. WR-64,654-02 (Tex. Crim. App. May 27, 2016)(not designated for publication).

On remand, the trial court held an evidentiary hearing. The trial court adopted the State's proposed findings of fact and conclusions of law recommending that the relief sought be denied.

This Court has reviewed the record with respect to the allegation made by applicant that he is entitled to relief under Article 11.073 because new scientific knowledge on hypnosis and its effects on memory recall were not previously available to him. Article 11.073 §(b) provides (1) that applicant must show that (A) the relevant scientific evidence was not previously available, and (B) the evidence would be admissible at trial, and (2) had the evidence been presented at trial, on the preponderance

of the evidence the person would not have been convicted. We agree with the trial judge's findings and conclusions that applicant fails to meet the dictates of Article 11.073 §(b). Therefore, based upon the trial court's findings and conclusions and our own review, we deny relief on applicant's first claim.

Applicant's remaining claims are procedurally barred. We dismiss claims 2, 3, and 4 as an abuse of the writ under Article 11.071 §5(a)(1) without reviewing the merits of the claims raised.

IT IS SO ORDERED THIS THE 6th DAY OF MAY, 2020.

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