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DARBY, DARRELL DARCELL Tr. Ct. No. C-396-W011308-0807929-A
WR-88,621-01

This is to advise that the Court has denied without written order the application for
writ of habeas corpus on the findings of the trial court without a hearing.

Deana Williamson, Clerk

DARRELL DARCELL DARBY
COFFIELD UNIT - TDC # 1147569
2661 FM 2054
TENNESSEE COLONY, TX 75884

JUL 23 2018
EBNAB 75884

Appendix A

EX PARTE § **IN THE 396th JUDICIAL**
§
§
§
DARRELL DARCELL DARBY § **DISTRICT COURT OF**
§
TARRANT COUNTY, TX

**STATE'S PROPOSED MEMORANDUM, FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

The State proposes the following Memorandum, Findings of Fact and Conclusions of Law regarding the issues raised in the present application for Writ of Habeas Corpus.

MEMORANDUM

The applicant, DARRELL DARCELL DARBY (“Applicant”), alleges his confinement is illegal because he received ineffective assistance of counsel. *See* Application, p. 6-7.

FINDINGS OF FACT

General Facts

1. Applicant was convicted by a jury of capital murder on January 17, 2003. *See* Judgment, No. 0807929D.
2. Appellant was sentenced to confinement for life in the Texas Department of Criminal Justice – Institutional Division. *See* Judgment.
3. The trial court’s judgment was affirmed by the Second Court of Appeals on August 25, 2004. *Darby v. State*, 145 S.W.3d 714 (Tex. App. – Fort Worth 2004, pet. ref’d).

Ineffective Assistance of Counsel

4. Mandate issued on June 22, 2005. *See* Criminal Docket Sheet, Vol. II, p. 3.
5. Applicant has waited thirteen years to allege ineffective assistance of trial and appellate counsel. *See* Application, p. 1, 6-7.
6. Applicant's delay in filing his application prejudices his claims.
7. Trial counsel filed a Motion to Suppress Oral & Written Statements of Defendant on October 11, 2002. [CR 128]
8. A hearing was held on the motion to suppress on November 4, 2002. [3 RR 4]
9. During the hearing, defense counsel brought up that Applicant was mentally retarded and was in Special-Ed. [3 RR 109-110]
10. There was testimony that, while Applicant was slow, he was able to read the statement. [3 RR 89-91]
11. Applicant presents no evidence that he could not read, write, or understand his confession. *See* Application; Memorandum.
12. Applicant presents no evidence of his mental health, MHMR records, or school records. *See* Application; Memorandum.
13. Applicant's mother testified at his trial that Applicant could read and write "very, very, very little" which supported Detective Ford's testimony that Applicant was able to slowly read his statement. [3 RR 89-91; 9 RR 223]
14. There is no evidence that evidence was available to prove that Applicant could not read, write, or understand his confession due to his mental impairment.
15. Applicant alleges that he did not consent to the filing of the petition for discretionary review. *See* Memorandum, p. 39.
16. Applicant's Exhibit A is evidence that the petition for discretionary review was filed at Applicant's request. *See* Memorandum, Exhibit A: Cummings Letter, p. 1.

17. Applicant did not complain to the trial court that appellate counsel filed a petition for discretionary review. *See* Criminal Docket Sheet, Vol. II, p. 3.
18. There is no credible evidence that Applicant did not consent to counsel's filing of the petition for discretionary review.
19. No affidavit is needed from defense counsel addressing Applicant's claims because they can be resolved based on the record.
20. There is no evidence that counsel's representation fell below an objective standard of reasonableness.
21. There is no evidence that a reasonable likelihood exists that the outcome of the proceedings would have been different but for the alleged misconduct.

CONCLUSIONS OF LAW

General Writ Law

1. "We have repeatedly held that the burden of proof in a habeas application is on the applicant to prove his factual allegations by a preponderance of the evidence." *Ex parte Brown*, 158 S.W.3d 449, 461 (Tex. Crim. App. 2005).
2. Relief may be denied if the applicant states only conclusions, and not specific facts. *Ex parte McPherson*, 32 S.W.3d 860, 861 (Tex. Crim. App. 2000). "Sworn pleadings provide an inadequate basis upon which to grant relief in habeas actions." *Ex parte Garcia*, 353 S.W.3d 785, 789 (Tex. Crim. App. 2011) (11.072 proceeding).

Ineffective Assistance of Counsel

3. An applicant's delay in seeking habeas corpus relief may prejudice the credibility of the claim. *Ex parte Young*, 479 S.W.2d 45, 46 (Tex. Crim. App. 1972).

4. The two-prong test enunciated in *Strickland v. Washington* applies to ineffective assistance of counsel claims in non-capital cases. *Hernandez v. State*, 988 S.W.2d 770, 771 (Tex. Crim. App. 1999). To prevail on his claim of ineffective assistance of counsel, the applicant must show counsel's representation fell below an objective standard of reasonableness, and there is a reasonable probability the results of the proceedings would have been different in the absence of counsel's unprofessional errors. *Strickland v. Washington*, 466 U.S. 668, 688, 694, 104 S. Ct. 2052, 2064, 2068, 80 L.Ed.2d 674 (1984).
5. The Court of Criminal Appeals "must presume that counsel is better positioned than the appellate court to judge the pragmatism of the particular case, and that he made all significant decisions in the exercise of reasonable professional judgment." *State v. Morales*, 253 S.W.3d 686, 697 (Tex. Crim. App. 2008) (citing *Delrio v. State*, 840 S.W.2d 443, 447 (Tex. Crim. App. 1992)).
6. "The proper standard of review for claims of ineffective assistance of counsel is whether, considering the totality of the representation, counsel's performance was ineffective." *Ex parte LaHood*, 401 S.W.3d 45, 49 (Tex. Crim. App. 2013) (citation omitted).
7. Support for Applicant's claim of ineffective assistance of counsel must be firmly grounded in the record and "the record must affirmatively demonstrate the meritorious nature of the claim." *Menefield v. State*, 363 S.W.3d 591, 592 (Tex. Crim. App. 2012) (quoting *Goodspeed v. State*, 187 S.W.3d 390, 392 (Tex. Crim. App. 2005)).
8. "A full inquiry into the strategy or tactics of counsel should be made only if from all appearances after trial, there is no plausible basis in strategy or tactics for his actions." *Ex parte Burns*, 601 S.W.2d 370, 372 (Tex. Crim. App. 1980) (citations omitted).
9. Counsel properly requested a pre-trial motion to suppress hearing regarding Applicant's confession.
10. Applicant has failed to prove that there was evidence that counsel could have presented proving that Applicant could not read, write, or understand his confession.

11. Applicant has failed to prove that counsel's representation regarding the motion to suppress Applicant's statement fell below an objective standard of reasonableness.
12. Applicant has failed to prove that counsel filed a petition for discretionary review without Applicant's consent.
13. Applicant has failed to prove that counsel's representation regarding the petition for discretionary review fell below an objective standard of reasonableness.
14. A party fails to carry his burden to prove ineffective assistance of counsel where the probability of a different result absent the alleged deficient conduct "sufficient to undermine confidence in the outcome" is not established. *See Ex parte Saenz*, 491 S.W.3d 819, 826 (Tex. Crim. App. 2016) (citation omitted).
15. "[A] court need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. The object of an ineffectiveness claim is not to grade counsel's performance. *If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, which we expect will often be so, that course should be followed.*" *Strickland v. Washington*, 466 U.S. 668, 697, 104 S.Ct. 2052, 2069, 80 L.Ed.2d 674 (1984) (emphasis added).
16. Applicant has failed to show that there is a reasonable probability that the result of the proceeding would have been different had counsel presented more evidence at the motion to suppress hearing.
17. Applicant has failed to show that there is a reasonable probability that the result of the proceeding would have been different had counsel not filed a petition for discretionary review on Applicant's behalf.
18. Applicant has failed to show that there is a reasonable probability that, but for the alleged acts of misconduct, the result of the proceeding would be different.
19. Applicant has failed to prove that he received ineffective assistance of counsel.
20. This Court recommends that Applicant's sole ground for relief be **DENIED**.

WHEREFORE, the State prays that this Court adopt these Proposed Findings of Fact and Conclusions of Law and recommend that Applicant's grounds for relief be **DENIED**.

Respectfully submitted,

SHAREN WILSON
Criminal District Attorney
Tarrant County

JOSEPH W. SPENCE
Chief, Post-Conviction

/s/Andréa Jacobs
Andréa Jacobs, Assistant
Criminal District Attorney
State Bar No. 24037596
401 West Belknap
Fort Worth, TX 76196-0201
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CERTIFICATE OF SERVICE

A true copy of the above has been mailed to Applicant, Mr. Darrell Darcell Darby, TDCJ-ID# 1147569, Coffield Unit, 2661 FM 2054, Tennessee Colony, Texas 75884 on the 6th day of June, 2018.

/s/Andréa Jacobs
Andréa Jacobs

NO. C-396-W011308-0807929-A

EX PARTE

DARRELL DARCELL DARBY

**§ IN THE 396th JUDICIAL
§ DISTRICT COURT OF
§ TARRANT COUNTY, TX**

ORDER

The Court adopts the State's Memorandum, Findings of Fact and Conclusions of Law as its own and recommends that the relief DARRELL DARCELL DARBY ("Applicant") requests be **DENIED**. The Court further orders and directs:

1. The Clerk of this Court to file these findings and transmit them along with the Writ Transcript to the Clerk of the Court of Criminal Appeals as required by law.
2. The Clerk of this Court to furnish a copy of the Court's findings to Applicant, Mr. Darrell Darcell Darby, TDCJ-ID# 1147569, Coffield Unit, 2661 FM 2054, Tennessee Colony, Texas 75884, and to the post-conviction section of the Criminal District Attorney's Office.

SIGNED AND ENTERED this _____ day of _____, 2018.

JUDGE PRESIDING

OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS
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8/10/2018

DARBY, DARRELL DARCELL Tr. GL No. C-396-W011308-0807929-A WR-
88,621-01

This is to advise that the applicant's suggestion for reconsideration has been
denied without written order.

Deana Williamson, Clerk

K410
AUG 20 2018

DARRELL DARCELL DARBY
COFFIELD UNIT - TDC # 1147569
2661 FM 2054
TENNESSEE COLONY, TX 75884

EBNAB 75884

Appendix C

**Additional material
from this filing is
available in the
Clerk's Office.**