

No. _____ (Capital Case)

**In the
Supreme Court of the United States**

EX PARTE BILLIE WAYNE COBLE,
Applicant.

*On Petition for Writ of Certiorari to the
Texas Court of Criminal Appeals*

APPENDICES

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Appendix A: *Ex parte Billie Wayne Coble*, 2019 WL 640202 (Tex. Crim. App. Feb. 14, 2019)

Appendix B: Affidavit of Billie Wayne Coble, Oct. 31, 1997.

APPENDIX A

2019 WL 640202

Only the Westlaw citation is currently available.

UNDER TX R RAP RULE 77.3, UNPUBLISHED
OPINIONS MAY NOT BE CITED AS AUTHORITY.

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Court of Criminal Appeals of Texas.

Ex Parte Billie Wayne Coble, Applicant

NO. WR-39,707-04

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FEBRUARY 14, 2019

**ON APPLICATION FOR POST-CONVICTION WRIT
OF HABEAS CORPUS AND MOTION FOR STAY OF
EXECUTION, IN CAUSE NO. 1989-1036-C2C IN THE
54TH JUDICIAL DISTRICT COURT, McLENNAN
COUNTY**

ORDER

Per curiam.

*1 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

¹ Unless otherwise indicated, all future references to Articles are to the Texas Code of Criminal Procedure.

In April 1990, a jury found applicant guilty of the August 1989 capital murder of his wife's parents and brother. The jury answered the special issues submitted pursuant to 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. *Coble v. State*, 871 S.W.2d 192 (Tex. Crim. App. 1993).

In his initial application for a writ of habeas corpus, applicant raised twenty-six claims, including a claim that he was medicated against his will during trial, which resulted in his involuntary relinquishment of his right to testify. After reviewing the merits of the claims, this

Court denied relief. *Ex parte Coble*, No. WR-39,707-01 (Tex. Crim. App. Feb. 17, 1999)(not designated for publication).

In 2007, the Fifth Circuit Court of Appeals affirmed the denial of habeas relief on guilt/innocence, but granted applicant habeas relief on punishment, holding that Texas's special issues operated unconstitutionally in applicant's case. *Coble v. Quarterman*, 496 F.3d 430 (5th Cir. 2007). After a new punishment trial, a jury again answered the punishment questions in a manner requiring the trial judge to sentence applicant to death. *Coble v. State*, 330 S.W.3d 253 (Tex. Crim. App. 2010).

In his initial application for a writ of habeas corpus filed after the punishment retrial, applicant raised twenty claims. In several of these claims, applicant complained about the testimony of State's witness A.P. Merillat. This Court reviewed the merits of the claims and denied relief. *Ex parte Coble*, No. WR-39,707-03 (Tex. Crim. App. Feb. 8, 2012)(not designated for publication).

On February 1, 2019, applicant filed in the trial court the instant writ application. In this application, applicant asserts that (1) his counsel improperly overrode his Sixth Amendment right to determine the objective of his defense, and (2) his sentence is based on the false testimony of State's witness A.P. Merillat.

Applicant has failed to make a *prima facie* showing that the recent case of *McCoy v. Louisiana*, 138 S. Ct. 1500 (2018), applies to him in his situation, and he has failed to show that either claim otherwise meets the requirements of Article 11.071 § 5. Accordingly, we dismiss this application as an abuse of the writ without reviewing the merits of the claim raised. Art. 11.071 § 5(c). Applicant's motion to stay his execution is denied.

IT IS SO ORDERED THIS THE 14th DAY OF
FEBRUARY, 2019.

Newell, J., not participating.

All Citations

Not Reported in S.W. Rptr., 2019 WL 640202

APPENDIX B

STATE OF TEXAS

COUNTY OF WALKER

AFFIDAVIT OF BILLIE WAYNE COBLE

I, Billie Wayne Coble, first being duly sworn upon oath, state that:

1. My name is Billie Wayne Coble. I am currently incarcerated at the Ellis One Unit, Texas Department of Criminal Justice, Huntsville, Texas 77343, under a sentence of death.
2. During my trial, I was under the impression that my attorneys were going to present a defense of some sort on my behalf. When they decided to rest after only showing the film about Vietnam, I did not agree with this decision, and I told my attorneys this.
3. On April 5, 1990, the day the defense presented the Vietnam film, I was given some medication at the jail where I was being held. I did not ask for any medication, nor did I want any. I do not know what I was given, but it did have an effect on me for the rest of the trial. From the time I was given the drug or medicine, I felt like I was in a stupor, and was not able to concentrate on the proceedings in court.
4. The next day, I was called into the judge's chambers and was asked whether I was satisfied with my legal representation and whether or not I wanted to waive my right to testify on my behalf. I do not remember this very well, because of the medication, but I know that whatever I was given had an effect on me that day and later on in the trial.
5. I did want to testify on my own behalf, and I was not satisfied with the decisions my attorneys were making in not offering any defense. I know the answers I gave to the judge were given under the effect of the medicine or drug, and, as a result, I did not give a voluntary waiver of my right to testify on my own behalf, a voluntary waiver of my right to present a defense, nor

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did I agree with the decision to rest the defense case at this point. The drug had the effect of making me "go along" with whatever I was asked, to not critically question the decisions I was asked to make, and to make me more compliant to the extent that I feel it influenced my free will. Since my trial, I have been upset and concerned about this involuntary drugging.

This concludes my affidavit.

Billie Wayne Coble

BILLIE WAYNE COBLE

SUBSCRIBED AND SWORN TO BEFORE ME THIS 31st DAY OF October, 1997.

Rita Radostitz

NOTARY PUBLIC, STATE OF TEXAS

