Exhibit 1

November 21, 2018 Court of Criminal Appeals of Texas Order Denying Habeas Corpus Application

IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-45,500-02

EX PARTE JEFFREY LEE WOOD, Applicant

ON APPLICATION FOR WRIT OF HABEAS CORPUS
CAUSE NO. A96-17 IN THE 216TH JUDICIAL DISTRICT COURT
KERR COUNTY

Per curiam. NEWELL, J., filed a concurring opinion. ALCALA, J., filed a dissenting opinion with which WALKER, J., joined. YEARY, J., concurred.

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.

Applicant was convicted in March 1998 of capital murder. The evidence showed that Applicant and Daniel Reneau robbed a gas station in Kerrville in 1996, and Reneau shot and killed employee Kriss Keeran during the robbery. During the punishment phase of his trial, the State called Dr. James Grigson to testify regarding Applicant's potential for future

dangerousness. The jury answered the special issues submitted pursuant to Texas Code of Criminal Procedure Article 37.071, and the trial court, accordingly, set punishment at death. This Court affirmed Applicant's conviction and sentence on direct appeal. *Wood v. State,* 18 S.W.3d 642 (Tex. Crim. App. 2000). This Court denied relief on Applicant's initial post-conviction application for writ of habeas corpus. *Ex parte Wood,* No. WR-45,500-01 (Tex. Crim. App. May 9, 2001)(not designated for publication).

The instant subsequent writ application, which Applicant filed in the trial court on August 2, 2016, presents eight claims challenging the validity of his conviction and resulting sentence. On August 3, 2016, Applicant filed in this Court a motion to stay his execution pending the consideration and disposition of this application. We stayed Applicant's execution and remanded this application to the trial court for consideration and resolution of Claims 3 and 4, in which Applicant complains of the presentation of "false and misleading testimony" and "false scientific evidence" from Dr. Grigson. *Ex parte Wood,* No. WR-45,500-02 (Tex. Crim. App. August 19, 2016)(not designated for publication). Specifically, Applicant complains that Grigson exaggerated his experience, "testified falsely about his ability to form a reliable psychiatric opinion based on a hypothetical question posed to him," and failed to inform the jury about his expulsion from the American Psychiatric Association ("APA") and the Texas Society of Psychiatric Physicians ("TSPP").

Following remand, the State filed a response that relief should be denied and the trial court signed an order stating that "there are no existing controverted, previously unresolved

factual issues material to the legality of Applicant's confinement." Applicant thereafter filed a motion requesting the trial court to "place the instant proceedings in abeyance pending discussions between the parties about possible settlement." On April 13, 2017, the trial court signed an order requesting that the case be placed in abeyance pending further discussion of the parties. The post-remand supplemental transcript was received in this Court on April 24, 2017.

On August 3, 2017, Kerr County District Attorney Lucy Wilke wrote a letter to the Parole Board stating in pertinent part that she "was not aware that Dr. Grigson had been expelled" from the APA and the TSPP "until well after the jury trial of the case." Wilke further stated that she would not have called Grigson as a witness if she had known about "Grigson's issues with said organizations." For this and other reasons, Wilke requested the Parole Board to recommend that the Governor grant clemency to Applicant and commute his sentence to life. On November 6, 2017, the Parole Board responded that it would not consider the clemency request "because there is currently no Execution Warrant."

On December 6, 2017, we again remanded this application for the trial court to make findings of fact and conclusions of law and a recommendation for the disposition of Claims 3 and 4. The trial court signed findings of fact and conclusions of law on January 19, 2018. The trial court concluded that "Claims 3 and 4 have merit," and recommended that relief be granted on these claims "as to punishment only."[1] We disagree.

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[1] The State objected to the trial court's findings and conclusions, explaining that "while the State may believe in a case for commutation, it does not believe that Applicant has met his burden

In order to be entitled to post-conviction habeas relief on the basis of false evidence, Applicant must show by a preponderance of the evidence that (1) false evidence was presented at his trial and (2) the false evidence was material to the jury's verdict. *See Ex parte De La Cruz,* 466 S.W.3d 855, 866 (Tex. Crim. App. 2015), *citing Ex parte Weinstein,* 421 S.W.3d 656, 659, 665 (Tex. Crim. App. 2014). We review factual findings concerning whether a witness's testimony is false under a deferential standard, but we review *de novo* the ultimate legal conclusion of whether such testimony was "material." *See Weinstein,* 421 S.W.3d at 664.

Even if we assume that the complained-of testimony was false or misleading, it was not material. Grigson offered an opinion about the future dangerousness of an individual described in a hypothetical posed by the State. *See Barefoot v. Estelle,* 463 U.S. 880 (1983). The jury was aware that Grigson had not personally examined Applicant, and the State did not particularly focus on Grigson's testimony during closing argument. In addition to the facts of the offense and Grigson's testimony, the State presented other evidence at punishment to establish Applicant's future dangerousness. The jury heard that Applicant not only participated in a prior gas station robbery with Reneau, he also discussed the possibility of committing more crimes with Reneau while they were in jail awaiting trial for the instant offense. Witnesses testified that Applicant resisted jailers after committing a disciplinary infraction. Applicant cursed at the jailers, threatened to kill them and to file a complaint

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in demonstrating entitlement to habeas relief."

against them, and hit one of them in the stomach. The jury also saw a letter Applicant wrote to Reneau, in which he drew a picture of the grim reaper and bragged about filing a complaint against the jailers. In light of this evidence, Applicant has not shown a reasonable likelihood that Grigson's testimony affected the judgment of the jury at the punishment phase of the trial. *See Weinstein,* 421 S.W.3d at 665.

Under the circumstances presented in this case, Applicant is not entitled to relief on the remanded claims. Based upon our own review, we deny relief on Claims 3 and 4.

We have also reviewed Applicant's claims regarding his competency to stand trial (Claims 1 and 2) and his constitutional challenges to his death sentence and the Texas death penalty scheme (Claims 5, 6, 7, and 8). With regard to these claims, we find that Applicant has failed to satisfy the requirements of Article 11.071, § 5(a). Accordingly, we dismiss these claims as an abuse of the writ without reviewing the merits.

IT IS SO ORDERED THIS THE 21st DAY OF NOVEMBER, 2018.

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NEWELL, J., filed a concurring opinion.

Applicant and Daniel Reneau robbed a Texaco station in 1996, stealing a safe, surveillance VCR, and other items.[1] During the robbery, Reneau shot the victim, thirty-one-year-old Kris Keeran. Applicant, the getaway driver, later admitted that he knew Reneau was going to rob the store and that he and Reneau had returned home prior to the robbery so that Reneau could trade the gun he had for a quieter one. Applicant also

[1] *See Wood v. Dretke*, 386 F. Supp. 2d 820, 825–26 (W.D. Tex. 2005), *aff'd sub nom. Wood v. Quarterman*, 491 F.3d 196 (5th Cir. 2007).

admitted that he knew Reneau would shoot Keeran if Keeran refused to cooperate with the robbery. Reneau was executed in 2002.

Applicant is criminally liable for the capital murder of Kris Keeran under the law of parties even though he did not actually pull the trigger. The habeas court listed Applicant's party liability as a primary consideration for granting relief on Applicant's claim that the State's expert, Dr. James P. Grigson (now deceased), had offered false or misleading testimony when giving his opinion that Applicant would be a future danger. This is also a significant factor in the decision of the current District Attorney of Kerr County to agree not to seek another death sentence if habeas corpus relief is granted. And it is also a significant reason why the current District Attorney, who was the original prosecutor in the case, has petitioned the Board of Pardons and Paroles to have Applicant's death sentence commuted to life in prison.

But regarding the writ application itself, the State argues that habeas corpus relief is inappropriate. The State observes that Applicant himself prohibited his attorney from cross-examining Dr. Grigson. This left his testimony unchallenged and his expulsion from the American Psychiatric Society and the Texas Society of Psychiatric Physicians unexplored before the jury. More importantly, the State argues that

Applicant has not shown Dr. Grigson's testimony to be material in light of the other evidence introduced at trial. The State presented significant evidence on the future dangerousness issue independent of Dr. Grigson's testimony:

> Applicant had committed a previous armed robbery with Reneau a year before the crime in this case.
>
> Applicant had instigated the robbery at issue.
>
> Applicant had laughed when watching the surveillance videotape of the clerk being murdered.
>
> Applicant and Reneau had plotted even more crimes while the two were in jail awaiting trial on this capital murder.
>
> Applicant resisted jailers who attempted to place him in lock-down after a disciplinary offense, threatened to kill them, and hit one of the jailers in the stomach.

The State focused primarily upon this evidence when arguing that Applicant was a future danger rather than the hypothetical question posed to Dr. Grigson.[2]

I agree with the State that Dr. Grigson's testimony and history is troubling. But I also agree that it was not material to the jury's

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[2] Applicant also argues that Dr. Grigson's testimony was false because Applicant "has not committed any violent disciplinary infractions on death row." However, the State has provided prison disciplinary records in its response to Applicant's habeas application which show that Applicant threatened to inflict physical harm on prison guards on more than one occasion while on death row.

determination. And the appropriate avenue to address the concerns about Applicant being sentenced to death as a party is through the clemency process. The Board of Pardons and Paroles has previously rejected the State's request for commutation because it could not consider that request before an execution date is set. Now that this application is no longer pending, the conviction court can set an execution date, and the Board can properly consider a possible joint request for commutation.

With these thoughts, I concur.

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ALCALA, J., filed a dissenting opinion in which WALKER, J., joined.

DISSENTING OPINION

The habeas court has recommended that Jeffery Lee Wood, applicant, receive a new trial on punishment due to the introduction of false and misleading expert testimony during the punishment phase of his capital murder trial. Because I agree with the habeas court's determination that this evidence was introduced in violation of applicant's due process rights, I would follow the court's recommendation that applicant be granted relief in the form of a new punishment hearing. Accordingly, I respectfully dissent from this Court's judgment denying relief to applicant.

The State obtained a death sentence against applicant by relying heavily on testimony by discredited psychiatrist Dr. James P. Grigson. Without personally examining applicant,

Dr. Grigson provided testimony stating definitively that a person with applicant's characteristics would certainly commit future acts of violence. Dr. Grigson stated, "[T]he individual you described will most certainly commit future acts of violence and does represent a threat to society." Unbeknownst to the State at the time of trial, Dr. Grigson had been expelled from the American Psychiatric Association and Texas Society of Psychiatric Physicians for presenting this type of scientifically unreliable testimony in numerous cases. For this reason, the State's prosecutor, who presented this testimony to the jury that determined that applicant should be sentenced to death, has recently averred that, had she known of Dr. Grigson's unreliability, she would not have presented his testimony during the punishment phase of applicant's trial. Furthermore, the State has recently represented that, in the event that applicant is granted habeas relief from his death sentence, it will not seek the death penalty against applicant again in the future.

In its findings of fact and conclusions of law, the habeas court has determined that Dr. Grigson's scientifically invalid testimony violated applicant's due process rights by misleading the jury and affecting its decision on punishment. *See Ex parte Weinstein*, 421 S.W.3d 656, 665-66 (Tex. Crim. App. 2014) (due process violation results from State's use of testimony that is both false and material; evidence is false if it, taken as a whole, "'gives the jury a false impression'"; false evidence is material if there is a "reasonable likelihood that it affected the judgment of the jury") (quoting *Ex parte Chavez*, 371 S.W.3d 200, 208 (Tex. Crim. App. 2012)). Specifically, the habeas court has determined that Dr. Grigson

"gave untrue and unreliable testimony of a purportedly scientific nature relevant to the future dangerousness special issue," and "misled the jury into believing he could reliably predict with certainty whether a given individual would commit future acts of violence." The court concluded that the admission of Dr. Grigson's testimony "contributed to the jury's affirmative finding on the future dangerousness special issue," particularly in light of the fact that applicant was convicted as a party to this offense and the lack of other overwhelming evidence suggesting future dangerousness. The court concluded, "Absent the expert testimony by Dr. Grigson, the Court's confidence that the jury would have unanimously determined beyond a reasonable doubt that the future dangerousness special issue should be answered affirmatively in the State's favor is severely undermined." Given the habeas court's determination that scientifically unreliable evidence was introduced at applicant's trial in violation of his due process rights, that the trial prosecutor has indicated she would not have introduced this evidence had she been aware of its unreliability, and that the State has determined that the revelations about Dr. Grigson are so material that it would not seek the death penalty against applicant in the future if he were granted habeas relief, I would follow the habeas court's recommendation to grant applicant relief from his death sentence and award him a new trial on punishment.

In cases such as the instant one, in which the prosecutors today acknowledge that the death sentence assessed against applicant is inappropriate, this Court should hold that it would violate the Eighth Amendment to execute applicant. "Because the death penalty is

unique 'in both its severity and its finality,'" the Supreme Court has "recognized an acute need for reliability in capital sentencing proceedings." *Monge v. California*, 524 U.S. 721, 732 (1998) (internal citations omitted). The imposition of the death penalty against a defendant cannot be considered reliable when even the State considers its imposition to be unwarranted and unjust. Because this Court disregards the habeas court's recommendation and upholds applicant's death sentence, I respectfully dissent.

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