



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-85,942-01

EX PARTE ERIC LYLE WILLIAMS, Applicant

**ON APPLICATION FOR POST-CONVICTION WRIT OF HABEAS CORPUS
FROM CAUSE NO. 32021A-422 IN THE 422ND CRIMINAL DISTRICT COURT
KAUFMAN COUNTY**

Per curiam.

O R D E R

This is an application for a writ of habeas corpus filed pursuant to the provisions of Texas Code of Criminal Procedure Article 11.071.

In December 2014, a jury convicted Applicant of capital murder for murdering the then-elected Kaufman County District Attorney, Michael McLelland, and McLelland's wife, Cynthia. *See* TEX. PENAL CODE § 19.03. The jury answered the special issues submitted under Article 37.071 of the Texas Code of Criminal Procedure, and the trial court, accordingly, set punishment at death. This Court affirmed Applicant's conviction and

sentence on direct appeal. *Williams v. State*, No. AP-77,053 (Tex. Crim. App. Nov. 1, 2017) (not designated for publication).

In his application, Applicant presents eleven challenges to the validity of his conviction and sentence. The trial court held an evidentiary hearing, entered amended findings of fact and conclusions of law,¹ and recommended that we deny the relief Applicant seeks.

We have reviewed the record regarding Applicant's allegations. Claims 3 through 5 and Claims 8 through 11 are procedurally barred because they were raised and rejected on direct appeal, or they could have been raised on direct appeal, but were not. *See Ex parte Hood*, 304 S.W.3d 397, 402 n.21 (Tex. Crim. App. 2010) ("[T]his Court does not re-review claims in a habeas corpus application that have already been raised and rejected on direct appeal."); *Ex parte Nelson*, 137 S.W.3d 666, 667 (Tex. Crim. App. 2004) ("It is 'well-settled that the writ of habeas corpus should not be used to litigate matters which should have been raised on direct appeal.'").

In Claim 1, Applicant alleges that the State procured his death sentence through prosecutorial misconduct. Specifically, Applicant alleges that:

- the State violated his due process rights under *Brady v. Maryland*, 373 U.S. 83 (1963), by failing to disclose material impeachment and mitigating evidence pertaining to his co-defendant and wife, Kim Williams;
- the State presented false testimony from Kim Williams to obtain a death verdict against him, in violation of *Giglio v. United States*, 405 U.S. 150 (1972), and *Napue v. Illinois*,

¹ The trial court entered the amended findings of fact and conclusions of law after Applicant filed objections in the trial court to the original findings and conclusions.

360 U.S. 264 (1959);

- Applicant's rights to due process and a fair trial were violated when a recused and conflicted Kaufman County Assistant District Attorney participated in his prosecution; and
- the State violated his right to due process because it engaged in ex parte communications with the jury during the penalty phase deliberations.

In Claim 7, Applicant contends that his right to a fair trial was violated when his jury was exposed to an external influence that tainted the punishment verdict. We conclude that these allegations have no merit.

In Claim 2, Applicant alleges that his trial counsel were constitutionally ineffective because they did not:

- adequately investigate mitigating evidence;
- investigate and challenge the State's penalty phase evidence;
- object to the trial court's exclusion of mitigating evidence and preserve the issue by making proper offers of proof;
- adequately object to the trial court's limitation of mitigating evidence;
- object to the State's improper penalty phase argument;
- adequately investigate and challenge the State's version of the offense;
- challenge Applicant's LexisNexis search results, which authorities obtained without a warrant;
- move to suppress and object to evidence that was obtained by warrants signed by a judge who recused himself and later testified as a State witness at Applicant's trial;
- object to judicial bias;

- effectively litigate the admissibility of firearms evidence in the case;
- preclude or limit fingerprint testimony;
- object to the State's deficient chain of custody regarding an unfired round of ammunition found in a storage unit that was linked to Applicant; and
- object to the State's guilt-phase closing argument that assigned a burden to the defense to prove Applicant innocent.

Applicant also alleges in this claim that his trial counsel's cumulative deficient performance prejudiced him. However, Applicant fails to meet his burden under *Strickland v. Washington*, 466 U.S. 668 (1984), to show by a preponderance of the evidence that his trial counsel's representation fell below an objective standard of reasonableness and that there was a reasonable probability that the result of the proceedings would have been different but for counsel's deficient performance. *See Ex parte Overton*, 444 S.W.3d 632, 640 (Tex. Crim. App. 2014) (citing *Strickland*, 466 U.S. at 688).

In Claim 6, Applicant alleges that he received ineffective assistance on appeal because appellate counsel did not:

- challenge the trial court's erroneous denial of Applicant's motions for continuances based on trial counsel's inability to review the large amount of discovery in the case;
- challenge the trial court's erroneous denial of Applicant's second motion for a change of venue;
- challenge the trial court's refusal to empanel a non-death-qualified jury to decide Applicant's guilt or innocence;
- challenge the trial court's erroneous admission of a photograph of an incendiary device during the guilt phase of trial;

- argue that the trial court abused its discretion by admitting victim impact evidence at the guilt phase of trial;
- challenge testimony that violated Applicant's right to individualized sentencing under the Eighth Amendment; and
- adequately brief certain issues.

In this claim, Applicant also alleges that appellate counsel's cumulative deficiencies prejudiced him. However, Applicant has not shown that appellate counsel unreasonably failed to raise nonfrivolous issues on appeal or a reasonable probability that, but for counsel's unreasonable failure to raise these allegations, Applicant would have prevailed on his appeal. *See Smith v. Robbins*, 528 U.S. 259, 285 (2000); *Ex parte Miller*, 330 S.W.3d 610, 623–24 (Tex. Crim. App. 2009).

We decline to adopt Amended Finding of Fact and Conclusion of Law number 1234, (“The testimony was relevant because it allowed the jury to assess whether Cynthia [McLelland] had any ability to resist her attacker.”). We modify Amended Finding of Fact and Conclusion of Law number 1265 to correct a clerical error, as follows: “Applicant has failed to prove his appellate counsel were ineffective as regards any of his sub-claims under *Claim 6*.” We adopt the trial court’s remaining amended findings of fact and conclusions of law. Based upon the trial court’s amended findings and conclusions that we have adopted (or modified) and our own review, we deny relief.

IT IS SO ORDERED THIS THE 16TH DAY OF SEPTEMBER, 2020.

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