

No. \_\_\_\_\_

**IN THE SUPREME COURT OF THE UNITED STATES**

CHARLES DON FLORES,

*Petitioner,*

v.

TEXAS,

*Respondent.*

---

**APPLICATION TO THE HONORABLE SAMUEL A. ALITO, JR.  
FOR EXTENSION OF TIME TO FILE  
A PETITION FOR A WRIT OF CERTIORARI TO THE  
TEXAS COURT OF CRIMINAL APPEALS**

---

Under 28 U.S.C. § 2101(c) and this Court’s Rule 13.5, Applicant Charles Don Flores hereby moves for an extension of time of 60 days, up to and including **March 5, 2022**, for the filing of a petition for writ of certiorari. In support of this request, he offers the following:

1. This Court has jurisdiction to grant this application under 28 U.S.C. § 1257(a).
2. Mr. Flores seeks review of a decision of the Texas Court of Criminal Appeals, dated October 6, 2021, denying habeas relief in a death-penalty case. *See* Exhibit A.

3. Absent an extension, Mr. Flores's petition for writ of certiorari would be due on January 4, 2022. In accordance with Rule 13.5, this application is being filed more than 10 days before that date.

4. Mr. Flores was convicted of capital murder and sentenced to death in Dallas County, Texas in 1999. He has consistently maintained his innocence and that his conviction was obtained through police and prosecutorial misconduct. Due to deficient representation and the absence of any resources, investigation of the facts underlying the alleged wrongful conviction was not undertaken until an execution warrant was signed in 2016. His execution date was subsequently stayed by order of the Texas Court of Criminal Appeals to permit development of a narrow issue involving the State's reliance on an identification obtained from a witness 13 months after-the-fact and after the witness had been subjected to "investigative hypnosis" by police officers involved in the underlying murder investigation.

5. The State's reliance on "investigative hypnosis" to obtain inculpatory evidence was not, however, the only issue that raised concerns of constitutional magnitude about the integrity of his 1999 conviction. However, during a previous state habeas proceeding that culminated in 2019, Mr. Flores was precluded, at the request of the State, from challenging any other aspect of the conviction other than the State's reliance on a hypnotized witness at trial.

6. Thereafter, on February 3, 2021, Mr. Flores filed a subsequent application for a writ of habeas corpus pursuant to state law in which he attacked all of the purportedly inculpatory evidence used against him at trial and proffering new

evidence to support his claims, including his claim of Actual Innocence. The application was over 800 pages in length and was supported by voluminous evidentiary proffers. It raised multiple claims arising under the U.S. Constitution. The request for habeas relief was summarily denied by the Texas Court of Criminal Appeals on October 6, 2021 without a merits review. *See* Exhibit A.

7. A petition for writ of certiorari is essential in this case because Mr. Flores is under a death sentence and his post-conviction case presents substantial, important, and recurring questions of federal constitutional law, including the issue of whether he was denied Due Process under the Fourteenth Amendment to the U.S. Constitution in the underlying state habeas proceeding as he attempted to establish his Actual Innocence.

8. Undersigned counsel respectfully seeks this extension of time because of the importance of the issues in this case and counsel's obligations in other cases. Undersigned counsel is a solo practitioner appointed to represent Mr. Flores under the Criminal Justice Act (CJA), but she has been representing him in state habeas on a pro bono basis because the federal courts in the Fifth Circuit are not authorizing compensation for work undertaken to develop previously unexhausted claims for habeas relief or to prepare and present petitions for writs of certiorari to this Court arising out of state habeas proceedings. Between the date of the instant application and the current deadline for filing a petition for writ of certiorari, Ms. Sween has substantial existing obligations in other capital cases as well as this one. These obligations include sole responsibility for a trial-level evidentiary hearing authorized

in a post-conviction proceeding on behalf of a death-sentenced individual that is in process, the preparation of proposed findings of fact and conclusions of law in a recently completed, 8-day evidentiary hearing in a death-penalty case, and a forthcoming direct appeal in a death-penalty case.

9. An extension of time will not prejudice Respondent.

10. The foregoing reasons demonstrate that the interests of justice and the need for sufficient time for counsel to prepare a well-reasoned and amply supported petition for writ of certiorari on a complex and extensive record warrant the requested extension. That is, good cause exists.

11. Therefore, Applicant respectfully requests that an extension of time, up to and including **March 5, 2022**, be granted within which Applicant may file a petition for writ of certiorari.

Respectfully submitted,

*/s/ Gretchen Sims Sween*

GRETCHEN SIMS SWEEN,  
*Counsel of Record*, Member of the Supreme Court Bar

PO Box 5083

Austin, TX 78763-5083

[gsweenlaw@gmail.com](mailto:gsweenlaw@gmail.com)

Telephone: 214.557.5779

*Counsel for Applicant*

Date Submitted: December 1, 2021

# EXHIBIT A



## IN THE COURT OF CRIMINAL APPEALS OF TEXAS

**NO. WR-64,654-03**

**EX PARTE CHARLES DON FLORES, Applicant**

**ON APPLICATION FOR WRIT OF HABEAS CORPUS  
IN CAUSE NO. W98-02133 IN THE 195TH DISTRICT COURT  
DALLAS COUNTY**

*Per curiam.*

### **ORDER**

This is a subsequent application for a writ of habeas corpus filed pursuant to Texas Code of Criminal Procedure Article 11.071, Section 5.<sup>1</sup>

In April 1999, a jury found Applicant guilty of the 1998 murder of Elizabeth Black in the course of committing or attempting to commit robbery and burglary. *See* TEX. PENAL CODE § 19.03(a). Based on the jury's answers to the special issues submitted pursuant to Article 37.071, the trial court sentenced Applicant to death. Art. 37.071, §

---

<sup>1</sup> Unless otherwise indicated, all references and citations to Articles in this order refer to the Texas Code of Criminal Procedure.

2(g). 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 state habeas application in September 2000 and timely supplemented that application in December 2000. This Court denied relief on all of Applicant's claims. *Ex parte Flores*, No. WR-64,654-01 (Tex. Crim. App. Sept. 20, 2006) (not designated for publication). Applicant filed his first subsequent state habeas application in May 2016. We concluded that one of Applicant's claims satisfied the requirements of Article 11.071, Section 5, and we remanded that claim to the habeas court. *Ex parte Flores*, No. WR-64,654-02 (Tex. Crim. App. May 27, 2016) (not designated for publication). On remand, the habeas court found and concluded that Applicant was not entitled to relief. We agreed. Therefore, we denied the claim we had earlier remanded and dismissed the remaining claims as abuses of the writ under Article 11.071, Section 5. *See Ex parte Flores*, No. WR-64,654-02 (Tex. Crim. App. May 6, 2020) (not designated for publication).

On February 3, 2021, Applicant filed in the habeas court the instant application, his second subsequent state habeas application. In it, Applicant makes ten claims for postconviction relief. In claim one, Applicant alleges that a new scientific consensus in the field of eyewitness identifications has rendered one eyewitness's in-court identification of Applicant unreliable and further shows that this witness's earlier failure to pick Applicant out of a lineup is exculpatory. *See Art. 11.073*. In claim two, Applicant alleges that the State's trace-evidence expert's trial testimony has been rendered

scientifically unsupportable in light of previously unavailable scientific evidence. *See id.*

In claim three, Applicant alleges that he is actually innocent of murdering Elizabeth Black. *See Ex parte Elizondo*, 947 S.W.2d 202, 209 (Tex. Crim. App. 1996). In claims four and five, Applicant alleges that the State suppressed evidence that was material to his conviction and sentence. *See Brady v. Maryland*, 373 U.S. 83, 87 (1963). In claims six, seven, and eight, Applicant alleges that the State knowingly or unknowingly sponsored false testimony. *See Ex parte Chabot*, 300 S.W.3d 768, 770–71 (Tex. Crim. App. 2009).

In claim nine, Applicant alleges that his trial lawyers improperly overrode his Sixth Amendment right to assert his innocence at trial. *See McCoy v. Louisiana*, 138 S. Ct. 1500, 1509 (2018). In claim ten, Applicant alleges that his due process right to a fair trial was violated by the State’s use of testimony that, according to Applicant, current scientific understanding exposes as false. *Cf. Ex parte Roberson*, No. WR-63,081-03 (Tex. Crim. App. June 16, 2016) (not designated for publication).

Having reviewed Applicant’s application, we conclude that it does not satisfy the requirements of Article 11.071, Section 5. Therefore, we dismiss the application as an abuse of the writ without reviewing the merits of the claims raised. Art. 11.071, § 5(c).

IT IS SO ORDERED THIS THE 6TH DAY OF OCTOBER, 2021.

Do Not Publish