



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 5.¹

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, §

¹ 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.

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