

OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS

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KING, EARL LEE

Tr. Ct. No. 13F0063-202-C

WR-88,228-04

The Court has dismissed without written order this subsequent application for a writ of habeas corpus. TEX. CODE CRIM. PROC. Art. 11.07, Sec. 4(a)-(c).

Deana Williamson, Clerk

EARL LEE KING
LEBLANC UNIT - TDC # 2009392
3695 FM 3514
BEAUMONT, TX 77705

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CAUSE NO. 13F0063-202C

EX PARTE

IN THE 202nd DISTRICT COURT

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§

EARL LEE KING

BOWIE COUNTY, TEXAS

**ORDER RECOMMENDING DISMISSAL OF
APPLICANT'S THIRD APPLICATION FOR WRIT OF HABEAS CORPUS**

On this day, the Court considered Applicant's Third Application for Writ of Habeas Corpus filed pursuant to art. 11.07, Texas Code of Criminal Procedure. Having reviewed the Application, the Court record and the applicable law, the Court makes the following recommendation.

I. INTRODUCTION

Earl Lee King ("Applicant") was convicted of Aggravated Sexual Assault of a Child and sentenced to twenty-five years in the Texas Department of Criminal Justice- Institutional Division and was convicted of Indecency with a Child by Sexual Contact and sentenced to twenty years in the Texas Department of Criminal Justice- Institutional Division. Applicant filed an Application for Writ of Habeas Corpus alleging several grounds of relief. This Court entered an Order Recommending Denial. Thereafter, the Court of Criminal Appeals denied Applicant's Application for Writ of Habeas Corpus. Applicant then filed his second Application for Writ of Habeas Corpus, which was dismissed. He has now filed his third Application for Writ of Habeas Corpus, which the Court will address below.

II. APPLICANT'S THIRD APPLICATION FOR WRIT OF HABEAS CORPUS

As stated above, Applicant has previously filed an application for writ of habeas corpus. Section 4 of Article 11.07, Texas Code of Criminal Procedure, governs the filing of subsequent applications for writ of habeas corpus. Section 4(a) states that a court may not consider the merits

of or grant relief based on the subsequent application unless the application contains sufficient specific facts establishing that:

- (1) the current claims and issues have not been and could not have been presented previously in an original application or in a previously considered application filed under this article because the factual or legal basis for the claim was unavailable on the date the applicant filed the previous application; or
- (2) by a preponderance of the evidence, but for a violation of the United States Constitution no rational juror could have found the applicant guilty beyond a reasonable doubt.

In the instant case, Applicant has asserted that the facts underlying his claim were not available when he filed his previous applications. Specifically, he contends neither he nor his attorney knew that complainant and her mother, the outcry witness, were not going to testify at trial and had moved from Texas to California to avoid testifying. He contends that in March of 2021, he learned of this in a letter he received from a former girlfriend, who learned of it through a friend of the outcry witness. It should be noted, Applicant did not attach the purported letter on which he relies to his application. Further, any statements in the purported letter are hearsay based on hearsay.

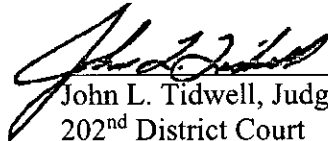
Even if the Court were to consider the hearsay statements in the purported letter, Applicant cannot meet his burden of establishing that the factual basis for this claim was unavailable at the time he filed his previous applications for writ of habeas corpus. The fact that he only recently learned of this information does not mean it was unavailable at the time of trial, much less when he filed his prior applications. Therefore, the Court finds he has failed to meet his burden to file and subsequent writ, and same should be dismissed.

III. CONCLUSION

Applicant does not meet the legal requirements necessary to proceed with his successive Application for Writ of Habeas Corpus. Therefore, the Court recommends dismissal of

Applicant's Third Application for Writ of Habeas Corpus. The District Clerk shall transmit to the Court of Criminal Appeals a copy of this Order and any documents not previously forwarded for review by that Court as provided by law.

SIGNED ON 1/25/2022



John L. Tidwell, Judge
202nd District Court
Bowie County, Texas

**Additional material
from this filing is
available in the
Clerk's Office.**