

APPENDIX A

Postcard Denial of State Application for Writ of Habeas Corpus from
Texas Court of Criminal Appeals

OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS

9/28/2022

CASTILLO, JOSE ADOLPHO WR-90,521-01
T.T. CT. No. 1301318-A
This is to advise that the Court has denied without written order the application for
writ of habeas corpus on the findings of the trial court without a hearing and on the
Court's independent review of the record.

Beana Williamson, Clerk

JOSE ADOLPHO CASTILLO
CONNALLY UNIT - TDC # 2019371
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APPENDIX B

Trial Court's Findings of Fact and Conclusions of Law on Application
for Writ of Habeas Corpus in State Court

Cause No. 1301318-A

ADDO
(993)

EX PARTE

§ IN THE 228th DISTRICT

JOSE ADOLPHO CASTILLO, § HARRIS COUNTY, TEXAS
Applicant

**STATE'S PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER**

The Court has considered the application for writ of habeas corpus, the affidavit of Jimmy Ortiz and Eddie Cortez, and official court records in the above-captioned cause. The Court finds there are no material previously unresolved issues relevant to the issue of confinement. The Court recommends that the relief requested be denied for the following reasons:

FINDINGS OF FACT

1. The applicant was convicted by a jury of the felony offense of capital murder. The applicant was sentenced to life without parole in the Texas Department of Criminal Justice -- Institutional Division. *See Judgement in cause no. 1301318.*
2. The Fourteenth Court of Appeals affirmed the conviction on December 8, 2016. *Castillo v. State*, No. 14-15-00753-CR, 2016 WL 7177729, at *2 (Tex. App. Dec. 8, 2016). Mandate issued on April 20, 2017.
3. The applicant filed the instant writ application, 1301318-A on March 9, 2018.
4. The State filed a Motion Requesting Designation of Issues and the Court signed the order on April 6, 2018.
5. On October 19, 2019 the application was received by the Court of Criminal Appeal and was remanded back to the trial court on December 11, 2019.

6. On February 26, 2020 the Court filed an order for affidavit after remand ordering Eddie Cortez and Jimmy Ortiz to respond to the writ allegations.
7. On March 9, 2020 the Court filed a Request for Extension while awaiting the court-ordered affidavit from trial counsel, Eddie Cortez and Jimmy Ortiz.
8. On March 23, 2022 the Court of Criminal Appeals sent its second remand reminder.
9. On July 28, 2022 Jimmy Ortiz filed his affidavit responding to the allegations made in the applicant's writ application.
10. The Court finds that Jimmy Ortiz represented the applicant during his trial and that he has filed an affidavit responding to the writ allegations. The Court finds Ortiz' affidavit to be credible and that the facts stated therein are true. *See Affidavit of Jimmy Ortiz*.
11. In his first and second grounds for relief, the applicant claims trial counsel was ineffective for failing to disqualify jurors for bias. *See Writ Application*. The Court finds, based on the trial record that the jurors the applicant complains of did not indicate they were bias or could not be fair (IV R.R. 93; II R.R. 104).
12. The Court finds, based on the credible affidavit of Jimmy Ortiz, that Ortiz did not believe the jurors indicated bias and Ortiz did not believe jurors 67 and 42 should be disqualified. *See Affidavit of Jimmy Ortiz*. The Court finds that Ortiz' assessment was reasonable.
13. In his third ground for relief the applicant claims that counsel was ineffective for failing to file a motion in limine to keep out all inadmissible testimony. *See Writ Application*.
14. The Court finds, based on the credible affidavit of Ortiz, that Ortiz decided not to file a motion in limine covering "all inadmissible testimony" but rather, intended to object during the trial to any testimony he believed was inadmissible. *See Affidavit of Jimmy Ortiz*.
15. The Court finds that Ortiz' decision to object during the trial rather than filing a preemptive motion in limine is reasonable trial strategy.
16. In his fourth ground of relief the applicant claims counsel was ineffective for eliciting hearsay from detective Blain that "Ricky" identified the applicant as one of the persons who committed the robbery. *See Writ Application*.
17. The Court finds, based on the credible affidavit of Ortiz, that it was part of Ortiz' trial strategy to show that "Ricky" and other witnesses (Victor Murillo and Mark Deleon)

were lying about the applicant's involvement in the robbery and therefore detective Blain's testimony about "Ricky" identifying the applicant was relevant to his defense. *See Affidavit of Jimmy Ortiz.*

18. The Court finds that counsel's actions at trial regarding detective Blain's testimony were played out as part of his trial strategy and that those actions were not objectively unreasonable.
19. In his fifth through ninth grounds for relief the applicant claims counsel was ineffective for failing to object and for eliciting testimony from Victor Murillo regarding a conversation Murillo had with the applicant and the co-defendant "Ricky" discussing a robbery and subsequent phone conversation from the applicant about Murillo's participation in the robbery. *See Writ Application.*
20. The Court finds, based on the credible affidavit of Ortiz, the applicant's defense was that he never agreed to participate in the robbery at the time of the discussion nor during the subsequent phone conversation. *See Affidavit of Jimmy Ortiz.* The Court finds that Murillo's testimony was necessary to develop the defense strategy and therefore, Ortiz' decision not to object to the testimony on direct and to elicit more testimony on the subject during cross-examination was strategic and reasonable.
21. In his tenth ground for relief, the applicant claims that counsel was ineffective for failing to object to detective Robles' speculative testimony identifying the applicant in the video of the robbery. *See Writ Application.*
22. The Court finds the applicant is mistaken in his claims. On direct examination, when the State asked Robles about the identity of the person in the video Ortiz did object to speculation and that objection was sustained (VI R.R. 154-155). Further, during cross-examination Robles agreed that he could not tell who was in the video based on facial features alone. (VI R.R. 168).
23. In his eleventh ground for relief the applicant claims counsel was ineffective for failing to object to the trial court's commentary on the weight of detective Robles' testimony. *See Writ Application.*
24. The Court finds that the applicant is incorrect. After sustaining counsel's speculation objection, the court stated "...I think you've already gotten more out of this than you probably should have..." (VI R.R. 169). The Court finds that this was not a comment on the weight or credibility of the evidence.
25. In his twelfth and thirteenth grounds for relief, the applicant claims counsel was

ineffective for failing to object to the prosecutor's statements during closing argument referencing Murillo's testimony as complained of in grounds 5-9. *See Writ Application.*

26. The Court finds that counsel intentionally allowed and elicited the testimony in order to support his defense theory that the applicant never agreed to participate in the robbery. *See Affidavit of Jimmy Ortiz.* Therefore, the Court finds that counsel was not ineffective for failing to object to the State referencing evidence that had been admitted during the trial.
27. In his fourteenth through seventeenth grounds for relief the applicant claims counsel was ineffective for failing to object during closing argument when the State commented on the veracity of the witnesses' testimony. *See Writ Application.* The Court finds based on the credible affidavit of Ortiz, that the State was not commenting on the veracity of the witnesses' testimony, but rather was making arguments based on the evidence that had been admitted at trial. *See Affidavit of Jimmy Ortiz.*
28. The Court finds that the applicant has failed to show that the State's arguments were improper and fails to show that, had counsel objected the trial court would have erred in overruling the objection.
29. In his eighteenth ground for relief, the applicant claims that counsel was ineffective for including the lesser-included offense of aggravated robbery into the jury charge. *See Writ Application.* The Court finds, based on the credible affidavit of Ortiz, that counsel discussed the pros and cons of having the lesser-included offense in the jury charge and the applicant agreed he wanted the lesser included in the charge.
30. The Court finds that the applicant fails to show how counsel's conduct was deficient.
31. The Court finds that the applicant received effective assistance of counsel.
32. In all things the Court finds that the applicant's conviction was not improperly obtained and recommends that his claims be denied.

CONCLUSIONS OF LAW

1. The applicant fails to show that counsel's conduct fell below an objective standard of reasonableness and that, but for trial counsel's alleged deficient conduct, there is a reasonable probability that the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Hernandez v. State*, 726 S.W.2d 53, 57 (Tex. Crim. App. 1986) (adopting the *Strickland* standard in Texas); and *Narvaiz v. State*, 840 S.W.2d 415, 434 (Tex. Crim. App. 1992) (defining the two-part

Strickland standard).

2. Because the applicant fails to show the trial court would have committed error in overruling the objections he claims should have been made, the applicant fails to show trial counsel was ineffective for failing to object. *Ex parte White*, 160 S.W.3d 46, 53 (Tex. Crim. App. 2004).
3. The totality of the representation afforded the applicant was sufficient to protect his right to reasonably effective assistance of counsel in the primary case.
4. In all things, the applicant fails to state a claim for which relief can be granted.

Accordingly, it is recommended to the Texas Court of Criminal Appeals that relief be denied.

ORDER

THE CLERK IS ORDERED to prepare a transcript of all papers in cause number 1301318-A and transmit same to the Court of Criminal Appeals as provided by TEX. CODE CRIM. PROC. ANN. art. 11.07 § 3. The transcript shall include certified copies of the following documents:

1. the application for writ of habeas corpus;
2. the Court's order;
3. the indictment, judgment and sentence, and docket sheets in cause number 1301318(unless they have been sent to the Texas Court of Criminal Appeals pursuant to a post-conviction writ of habeas corpus order);
4. the affidavit of Eddie Cortez filed in cause no. 1301318-A;
5. the affidavit of Jimmy Ortiz filed in cause no. 1301318-A;
6. the reporters record of the trial proceedings in cause no. 1301318-A;
7. the Court's Findings of Fact and Conclusions of Law; and

8. the State's and Applicant's Proposed Findings of Fact and Conclusions of Law (if any).

THE CLERK is further ORDERED to send a copy of this order to the applicant, Jose Adolpho Castillo – 02019371 Connally Unit, 899 FM 632; Kenedy, TX 78119 and to the Petitioner for the applicant, Steven Perez, 01514617 Connally Unit, 899 FM 632; Kenedy, TX 78119 and to counsel for the State, Brittney Rehg via email at rehg_brittney@dao.hctx.net.

By the following signature, the Court adopts the State's Proposed Findings of Fact, Conclusions of Law and Order.

SIGNED this _____ day of _____, 2022.

Signed: Frank Aguirre
8/10/2022

JUDGE PRESIDING

Cause No. 1301318-A

EX PARTE § IN THE 228th DISTRICT
§ COURT OF
JOSE ADOLPHO CASTILLO, § HARRIS COUNTY, TEXAS
Applicant

CERTIFICATE OF SERVICE

The undersigned counsel certifies that I have served a copy of the "State's Proposed Findings of Fact, Conclusions of Law, and Order" in cause number 1301318-A to the applicant and to the petitioner on July 11th, 2022 by mail as follows:

Jose Adolpho Castillo
02019371 Connally Unit,
899 FM 632; Kenedy, TX 78119

Steven Perez
01514617 Connally Unit
899 FM 632; Kenedy, TX 78119

/s/ Brittney Rehg

Brittney Rehg
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Automated Certificate of eService

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Brittney Rehg on behalf of Brittney Rehg

Bar No. 24085954

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Envelope ID: 66976556

Status as of 8/4/2022 2:43 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
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