APPENDIX A

IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-70,969-03

EX PARTE RAMIRO FELIX GONZALES, Applicant

ON APPLICATION FOR POST-CONVICTION WRIT OF HABEAS CORPUS AND MOTION FOR STAY OF EXECUTION FROM CAUSE NO. 04-02-09091-CR IN THE 454TH JUDICIAL DISTRICT COURT MEDINA COUNTY

***Per curiam*. KEEL and SLAUGHTER, JJ., dissent.**

O R D E R

We have before us a subsequent application for a writ of habeas corpus filed pursuant to the provisions of Texas Code of Criminal Procedure Article 11.071 § 5, and a motion to stay Applicant's execution.[1]

In August 2006, a jury convicted Applicant of the January 2001 capital murder of

[1] All references to "Articles" in this order refer to the Texas Code of Criminal Procedure unless otherwise specified.

Bridget Townsend. *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. This Court affirmed Applicant's conviction and sentence on direct appeal. *Gonzales v. State*, No. AP-75,540 (Tex. Crim. App. June 17, 2009) (not designated for publication).

We also denied relief on Applicant's initial habeas application. *Ex parte Gonzales*, No. WR-70,969-01 (Tex. Crim. App. Sept. 23, 2009) (not designated for publication). Because of "procedural variations," we later re-opened the case on our own motion, remanded it to the trial court, and ultimately denied relief again. *Ex parte Gonzales*, No. WR-70,969-01 (Tex. Crim. App. June 27, 2012) (not designated for publication). We dismissed his first subsequent habeas application as an abuse of the writ. *Ex parte Gonzales*, Nos. WR-70,969-01 and -02 (Tex. Crim. App. Feb. 1, 2012) (not designated for publication).

The trial court ultimately scheduled Applicant's execution for July 13, 2022. On June 30, 2022, Applicant filed the instant habeas application, in which he raises three claims. Specifically, Applicant asserts that: (1) the State presented at the punishment phase of Applicant's trial false and materially inaccurate expert testimony; (2) the State presented at punishment false testimony from a jail inmate; and (3) Applicant's death sentence violates the Eighth Amendment because there exists a national consensus that the death penalty is an excessive punishment for offenders less than twenty-one years old

at the time of the crime.

After reviewing the record, we have determined that a portion of Claim 1 meets the requirements of Article 11.071 § 5(a). In this claim, Applicant asserts that the State's trial expert, Dr. Edward Gripon, gave false testimony at trial because he has now reevaluated Applicant and determined that he is not a future danger. But the determination of future dangerousness is made at the time of trial and is not properly reevaluated on habeas. To the extent Applicant's first claim is such a reevaluation, the trial court shall not review it. However, Applicant has also presented at least a *prima facie* showing that testimony of recidivism rates Gripon gave at trial were false and that that false testimony could have affected the jury's answer to the future dangerousness question at punishment. This aspect of Claim 1 is remanded to the trial court for a merits' review. The remaining claims do not meet the requirements of Article 11.071 § 5(a) and should not be reviewed. Applicant's execution is stayed pending resolution of the remanded claim.

IT IS SO ORDERED THIS THE 11th DAY OF JULY, 2022.

Do Not Publish

APPENDIX B

IN THE COURT OF CRIMINAL APPEALS
OF TEXAS

NO. WR-70,969-03

EX PARTE RAMIRO FELIX GONZALES, Applicant

**ON APPLICATION FOR POST-CONVICTION WRIT OF HABEAS CORPUS
FROM CAUSE NO. 04-02-09091-CR IN THE
454TH JUDICIAL DISTRICT COURT
MEDINA COUNTY**

***Per curiam*.**

O R D E R

Before the Court is a subsequent application for a writ of habeas corpus filed pursuant to Texas Code of Criminal Procedure Article 11.071 § 5.[1]

In August 2006, a jury convicted Applicant of the January 2001 capital murder of Bridget Townsend. *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

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death. This Court affirmed Applicant's conviction and sentence on direct appeal. *Gonzales v. State*, No. AP-75,540 (Tex. Crim. App. June 17, 2009) (not designated for publication).

We also denied relief on Applicant's initial habeas application. *Ex parte Gonzales*, No. WR-70,969-01 (Tex. Crim. App. Sept. 23, 2009) (not designated for publication). Because of "procedural variations," we later re-opened the case on our own motion, remanded it to the trial court, and ultimately denied relief again. *Ex parte Gonzales*, No. WR-70,969-01 (Tex. Crim. App. June 27, 2012) (not designated for publication). We dismissed Applicant's first subsequent habeas application as an abuse of the writ. *Ex parte Gonzales*, Nos. WR-70,969-01 and -02 (Tex. Crim. App. Feb. 1, 2012) (not designated for publication).

The trial court ultimately scheduled Applicant's execution for July 13, 2022. On June 30, 2022, Applicant filed this, his second subsequent habeas application, in which he raised three claims. Specifically, Applicant asserted that: (1) the State presented false and materially inaccurate expert testimony at the punishment phase of his trial (Claim 1); (2) the State presented false testimony from a jail inmate at the punishment phase of Applicant's trial (Claim 2); and (3) Applicant's death sentence violated the Eighth Amendment because there is a national consensus that the death penalty is an excessive punishment for offenders less than twenty-one years old at the time of the crime (Claim 3). Applicant also moved this Court to stay his execution.

After reviewing the record, we determined that a portion of Claim 1—Applicant's contention that psychiatrist Dr. Edward Gripon gave false and materially inaccurate

punishment phase testimony about sex offender recidivism rates—met Article 11.071 § 5(a)(1)'s factual-unavailability exception to the prohibition against subsequent writ applications. We simultaneously determined that Applicant's remaining claims did not meet Article 11.071 § 5(a)'s requirements and therefore they should not be reviewed. We accordingly stayed Applicant's execution and remanded the recidivism rate allegation to the trial court for a merits review. *Ex parte Gonzalez*, No. WR-70.969-03 (Tex. Crim. App. July 11, 2022) (not designated for publication).

The recidivism rate allegation has now returned from remand with the trial court's findings of fact, conclusions of law, and recommendation to deny habeas relief. Applicant subsequently filed in this Court a "Motion for Assembly of a Supplemental Clerk's Record to Include Court Orders, Motions, and the Parties' Proposed Findings and Conclusions, as Provided By [Texas Code of Criminal Procedure Article] 11.071, § 8(d)."

We have reviewed the trial court's findings and conclusions concerning Applicant's remanded claim. We adopt all of them except for numbers forty-four through fifty-nine and seventy-one through seventy-seven, in which the trial court concludes that laches and procedural bars prevent a merits review of Applicant's remanded allegation.

Based on the trial court's findings and conclusions that we adopt and our independent review of the record, we conclude that Applicant is not entitled to habeas relief on the remanded portion of Claim 1. To prevail on a false testimony claim, Applicant must show by a preponderance of the evidence that: (1) the State elicited or failed to correct false or

misleading evidence at trial; and (2) the false or misleading evidence was material to the jury's verdict. *See Ex parte De La Cruz*, 466 S.W.3d 855, 866 (Tex. Crim. App. 2015).

Here, Applicant has not shown by a preponderance of the evidence that Gripon gave demonstrably false testimony regarding sex offender recidivism rates. *See Ukwuachu v. State*, 613 S.W.3d 149, 156 (Tex. Crim. App. 2020) ("A false-evidence claim requires demonstrably false evidence."). And, given the strength of the State's future dangerousness case, Applicant has also failed to show a reasonable likelihood that Gripon's challenged testimony affected the jury's answer to that punishment phase special issue. *See Napue v. Illinois*, 360 U.S. 264, 271 (1959).

Accordingly, we DENY habeas relief on the remanded portion of Applicant's Claim 1, and we DISMISS the remaining allegations in his subsequent application as an abuse of the writ. We further DISMISS AS MOOT Applicant's pending "Motion for Assembly of a Supplemental Clerk's Record to Include Court Orders, Motions, and the Parties' Proposed Findings and Conclusions, as Provided By [Texas Code of Criminal Procedure Article] 11.071, § 8(d)." The habeas record shows that the district clerk's office has supplemented the habeas record with the documents at issue in Applicant's motion.

IT IS SO ORDERED THIS THE 14th DAY OF JUNE, 2023.

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APPENDIX C

 KeyCite Yellow Flag - Negative Treatment
Unconstitutional or PreemptedPrior Version's Validity Called into Doubt by Abdul-Kabir v. Quarterman, U.S., Apr. 25, 2007

Vernon's Texas Statutes and Codes Annotated
Code of Criminal Procedure (Refs & Annos)
Title 1. Code of Criminal Procedure
Trial and Its Incidents
Chapter Thirty-Seven. The Verdict (Refs & Annos)

Vernon's Ann.Texas C.C.P. Art. 37.071

Art. 37.071. Procedure in capital case

Effective: September 1, 2019
Currentness

Sec. 1. (a) If a defendant is found guilty in a capital felony case in which the state does not seek the death penalty, the judge shall sentence the defendant to life imprisonment or to life imprisonment without parole as required by Section 12.31, Penal Code.

(b) A defendant who is found guilty of an offense under Section 19.03(a)(9), Penal Code, may not be sentenced to death, and the state may not seek the death penalty in any case based solely on an offense under that subdivision.

Sec. 2. (a)(1) If a defendant is tried for a capital offense in which the state seeks the death penalty, on a finding that the defendant is guilty of a capital offense, the court shall conduct a separate sentencing proceeding to determine whether the defendant shall be sentenced to death or life imprisonment without parole. The proceeding shall be conducted in the trial court and, except as provided by Article 44.29(c) of this code, before the trial jury as soon as practicable. In the proceeding, evidence may be presented by the state and the defendant or the defendant's counsel as to any matter that the court deems relevant to sentence, including evidence of the defendant's background or character or the circumstances of the offense that mitigates against the imposition of the death penalty. This subdivision shall not be construed to authorize the introduction of any evidence secured in violation of the Constitution of the United States or of the State of Texas. The state and the defendant or the defendant's counsel shall be permitted to present argument for or against sentence of death. The introduction of evidence of extraneous conduct is governed by the notice requirements of Section 3(g), Article 37.07. The court, the attorney representing the state, the defendant, or the defendant's counsel may not inform a juror or a prospective juror of the effect of a failure of a jury to agree on issues submitted under Subsection (c) or (e).

(2) Notwithstanding Subdivision (1), evidence may not be offered by the state to establish that the race or ethnicity of the defendant makes it likely that the defendant will engage in future criminal conduct.

(b) On conclusion of the presentation of the evidence, the court shall submit the following issues to the jury:

(1) whether there is a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society; and

(2) in cases in which the jury charge at the guilt or innocence stage permitted the jury to find the defendant guilty as a party under Sections 7.01 and 7.02, Penal Code, whether the defendant actually caused the death of the deceased or did not actually cause the death of the deceased but intended to kill the deceased or another or anticipated that a human life would be taken.

(c) The state must prove each issue submitted under Subsection (b) of this article beyond a reasonable doubt, and the jury shall return a special verdict of "yes" or "no" on each issue submitted under Subsection (b) of this Article.

(d) The court shall charge the jury that:

(1) in deliberating on the issues submitted under Subsection (b) of this article, it shall consider all evidence admitted at the guilt or innocence stage and the punishment stage, including evidence of the defendant's background or character or the circumstances of the offense that militates for or mitigates against the imposition of the death penalty;

(2) it may not answer any issue submitted under Subsection (b) of this article "yes" unless it agrees unanimously and it may not answer any issue "no" unless 10 or more jurors agree; and

(3) members of the jury need not agree on what particular evidence supports a negative answer to any issue submitted under Subsection (b) of this article.

(e)(1) The court shall instruct the jury that if the jury returns an affirmative finding to each issue submitted under Subsection (b), it shall answer the following issue:

Whether, taking into consideration all of the evidence, including the circumstances of the offense, the defendant's character and background, and the personal moral culpability of the defendant, there is a sufficient mitigating circumstance or circumstances to warrant that a sentence of life imprisonment without parole rather than a death sentence be imposed.

(2) The court shall:

(A) instruct the jury that if the jury answers that a circumstance or circumstances warrant that a sentence of life imprisonment without parole rather than a death sentence be imposed, the court will sentence the defendant to imprisonment in the Texas Department of Criminal Justice for life without parole; and

(B) charge the jury that a defendant sentenced to confinement for life without parole under this article is ineligible for release from the department on parole.

(f) The court shall charge the jury that in answering the issue submitted under Subsection (e) of this article, the jury:

(1) shall answer the issue "yes" or "no";

(2) may not answer the issue "no" unless it agrees unanimously and may not answer the issue "yes" unless 10 or more jurors agree;

(3) need not agree on what particular evidence supports an affirmative finding on the issue; and

(4) shall consider mitigating evidence to be evidence that a juror might regard as reducing the defendant's moral blameworthiness.

(g) If the jury returns an affirmative finding on each issue submitted under Subsection (b) and a negative finding on an issue submitted under Subsection (e)(1), the court shall sentence the defendant to death. If the jury returns a negative finding on any issue submitted under Subsection (b) or an affirmative finding on an issue submitted under Subsection (e)(1) or is unable to answer any issue submitted under Subsection (b) or (e), the court shall sentence the defendant to confinement in the Texas Department of Criminal Justice for life imprisonment without parole.

(h) The judgment of conviction and sentence of death shall be subject to automatic review by the Court of Criminal Appeals.

(i) This article applies to the sentencing procedure in a capital case for an offense that is committed on or after September 1, 1991. For the purposes of this section, an offense is committed on or after September 1, 1991, if any element of that offense occurs on or after that date.

Credits

Added by Acts 1973, 63rd Leg., p. 1125, ch. 426, art. 3, § 1, eff. June 14, 1973. Amended by Acts 1981, 67th Leg., p. 2673, ch. 725, § 1, eff. Aug. 31, 1981; Acts 1985, 69th Leg., ch. 44, § 2, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., ch. 652, § 9, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 838, § 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 781, § 1, eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 140, § 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 585, § 2, eff. Sept. 1, 2001; Acts 2005, 79th Leg., ch. 787, § 6, eff. Sept. 1, 2005; Acts 2005, 79th Leg., ch. 399, § 1, eff. Sept. 1, 2005; Acts 2005, 79th Leg., ch. 787, § 7, eff. Sept. 1, 2005; Acts 2005, 79th Leg., ch. 787, § 8, eff. Sept. 1, 2005; Acts 2005, 79th Leg., ch. 787, § 9, eff. Sept. 1, 2005; Acts 2009, 81st Leg., ch. 87, §§ 25.015, 25.016, eff. Sept. 1, 2009; Acts 2013, 83rd Leg., 2nd C.S., ch. 2 (S.B. 2), § 2, eff. July 22, 2013; Acts 2019, 86th Leg., ch. 1214 (S.B. 719), § 3, eff. Sept. 1, 2019.

Notes of Decisions (1912)

Vernon's Ann. Texas C. C. P. Art. 37.071, TX CRIM PRO Art. 37.071
Current through the end of the 2019 Regular Session of the 86th Legislature

End of Document

APPENDIX D

May 25, 2022

Raoul Schonemann
Clinical Professor
Capital Punishment Clinic
University of Texas School of Law
727 E. Dean Keeton St.
Austin, Texas 78705

Re: Ramiro Felix Gonzales (DOB: 11/5/1982)

Dear Mr. Schonemann:

I am writing to summarize my thoughts and opinions in regard to the above-named individual who I recently had the occasion to reevaluate after many years.

Introduction

I first had the occasion to evaluate Ramiro Gonzales and testify on behalf of the State in his original trial in Medina County, Texas in 2006. Following this trial, Mr. Gonzales was convicted of capital murder and sentenced to die by lethal injection. Since that time, he has been housed at the Polunsky Unit in Livingston, Texas on what is generally referred to in Texas as "Death Row."

I was contacted by your office in mid-2021 and asked if I would review certain documents regarding Mr. Gonzales's legal history, re-evaluate him, and reassess my prior determination as well as his current mental status. In connection with the 2021 evaluation, I was provided the following documents to review:

1. Trial transcripts: *State of Texas vs Ramiro Felix Gonzales*, No. 04-02-9091CR, 38th Judicial District, Medina County, Texas
   a. Guilt-innocence phase conducted August 22-25, 2006
   b. Penalty phase conducted August 29–September 6, 2006
2. Social history records including:
   a. Pre-trial jail records from the following institutions:
      i. Kerr County Detention Center
      ii. Medina County Jail
   b. School records from Bandera County schools
   c. Prosecution and juvenile probation records from Bandera and Medina counties
   d. Offense reports from prior offenses
3. Social history summaries
4. Declaration of Frederick Lee Ozuna
5. Records of incarceration in Texas Department of Criminal Justice from 2006 – present
6. Expert report of Dr. Katherine Porterfield, Ph.D.
7. Expert report of Dr. Michael F. Caldwell, Psy. D.
8. Newspaper reports of incident
9. Artwork of Ramiro Gonzales, 2016–2021
10. Articles regarding sex crimes statistics and frequency of reoffending

Summary of the case

Ramiro Gonzales was two months and a few days past his 18th birthday—18 years and 71 days old—when he was involved in a drug-related abduction and murder in response to which he was later tried and convicted and sentenced to death by lethal injection.

Recent evaluation

I re-evaluated Mr. Gonzales on Monday, September 20, 2021, at the Polunsky Unit of TDCJ in Livingston, Texas. When I arrived, Mr. Gonzales was already seated at a table in the small visitation room. He greeted me spontaneously and warmly

and stated he remembered me from the prior evaluation at the local jail and my testimony at the time of his punishment phase.

The evaluation began at approximately 10 a.m. and lasted about 3.5 hours. The evaluation was performed in a contact visitation room adjacent to the general visitation area in the Polunsky Unit. As a part of this examination, I performed a standard psychiatric evaluation with the formulation of a formal mental health status examination.

The results are as follows:

Family history

Ramiro Gonzales is a 39-year-old single Hispanic male who gave his date of birth as November 5, 1982. He was born in Dilley, Texas but reared in the general area of Bandera, Texas.

Mr. Gonzales is from what can be best described as a dysfunctional family background. He actually identifies his maternal grandparents as his primary caregiver/parent figures. He had little relationship with his biological mother, Julia Gonzales Saldana, while growing up, and he has not had any contact with her for a number of years. When asked directly how long it has been, Mr. Gonzales stated that their last communication was more than 20 years ago. He has been incarcerated for many years and has never heard from her during any of that time. Mr. Gonzales reports never have lived with his mother Julia, and states that not only does he not have any contact with her now but he is unaware of her current whereabouts.

Mr. Gonzales's maternal grandfather, Ramiro Sr., is in his eighties and does occasionally visit Mr. Gonzales at the Polunsky Unit. Mr. Gonzales reported that his maternal grandmother, Frances, is in her seventies and states that the health of both grandparents "is declining."

Mr. Gonzales's biological father is named Jacinto Sanchez. Mr. Sanchez lives in the Castroville, Texas area. Mr. Gonzales reported that he first met his biological father in 2001 while they were both confined in a jail in Hondo, Texas. He does occasionally hear from Mr. Sanchez by written response.

Mr. Gonzales reported that he has a half-sister and a half-brother from his mother's side of the family. His half-sister lives in Dime Box, Texas, and his half-brother died of colon cancer in 2016. On his father's side of his family, Mr. Gonzales doesn't know how many half siblings he might have but believes there are at least four. He does not have contact with any of them.

As Mr. Gonzales reports, and as is obvious to me, he has had essentially very little family structure and support, and the only stability in his childhood was whatever attempts were made by his maternal grandparents. Mr. Gonzales described his extended family as dysfunctional and referred to his childhood as "confused." In his family, there is a history of substance abuse, physical abuse, and sexual abuse.

Mr. Gonzales described his maternal grandparents as hard-working and caring, but stated that they were emotionally distant and rarely, if ever, demonstrated any true affection toward him during his formative years.

Educational background

In regard to formal education, Mr. Gonzales reported that the highest grade of formal education obtained was seventh grade. He stated he stopped going to school when he got to eighth grade. He is literate and can read and write.

Prior legal history

Mr. Gonzales's prior offense history as an adult involved theft, burglary, and forgery. He stated that he did receive a ten-year sentence in regard to that incident. He also has a prior conviction of unauthorized use of a motor vehicle.

In addition, he pled guilty to a sexual assault of Florence "Babo" Teich, which occurred after the capital murder of Bridget Townsend but before the discovery of her body, for which he was sentenced to two terms of life imprisonment.

Drug/alcohol history

It is obvious that Mr. Gonzales had the greatest difficulty by far in this area. In fact, there is a relatively short-lived history in the free world, but it is clear that he developed substantial addictions to drugs as a teenager and that his life as a late adolescent revolved around drug-seeking behavior.

Mr. Gonzales stated that he only used marijuana sporadically until the death of a family member, an aunt. He reported that he began using marijuana at about age 11. During that time, he occasionally used alcohol. His aunt Loretta reportedly died in a motor vehicle incident when he was approximately 16 years old; after that event, he spiraled into regular (and, in short order, severe) drug addiction and dependency. Mr. Gonzales stated that Loretta was married to his uncle Johnny, who was a significant drug user. This association facilitated Mr. Gonzales's increasing drug use.

Following his aunt's death, Mr. Gonzales began to use methamphetamine on an increasing basis. He has also used cocaine, another stimulant drug, but his drug of choice was methamphetamine. He stated he would use methamphetamine as often as possible, and at times would remain on a "meth-high" for as many as seven to ten days. Mr. Gonzales acknowledged that his criminal behavior escalated during this period to support his drug habit.

At the time of the capital offense, Mr. Gonzales reported that he had been using methamphetamines "heavily" for eighteen months to two years. He summarized his drug history by acknowledging that when "strung out on meth, the only thing one can even recognize or acknowledge, at that moment, is the unrelenting desire to obtain more drugs at any cost."

Description of the crime of conviction

Mr. Gonzales reported that he is on Death Row for the murder of a young woman by the name of Bridget Townsend. During our interview, he took full responsibility for the offense and displayed significant remorse for his actions.

Mr. Gonzales was able to describe the incident in detail. He reported that he had "issues" with the boyfriend of the victim, Joe Leal, whom he knew. According to

Mr. Gonzales, Mr. Leal was a known drug dealer, and Mr. Gonzales worked as a "middleman" for Mr. Leal to essentially bring him customers and business. Mr. Gonzales said that at the time of the offense he was "high" or "drugged up." Mr. Gonzales stated that Mr. Leal owed him money, so he went to the house seeking to obtain the money and/or drugs.

During this incident, Mr. Gonzales stated that he did find and take a small amount of money and a few drugs from a closet. He reported that Ms. Townsend said she was going to tell Mr. Leal and/or call the police. According to Mr. Gonzales, he was already on probation and was afraid he would be discovered, "but [he] did not plan to kidnap anyone." He really had no plans about to what to do at that point, but he took the young woman with him when he left Mr. Leal's trailer. After taking her to an isolated part of the ranch on which his grandfather worked, he sexually assaulted and then fatally shot her. Mr. Gonzales said that during this entire episode he "really had no plan and didn't know what to do with her."

Mr. Gonzales adamantly maintained that he never went back to the area where her body was left, as a fellow jailhouse inmate claimed at trial. Apparently, the former inmate has since recanted that claim.

Current status

Mr. Gonzales has developed significant insight into his earlier behaviors, particularly with respect to the role drugs played in his behavior as a teenager and his criminal offenses. He has come to understand the role drugs played in his life, and there is no doubt that he ended up in his current dilemma because of his florid history of substance abuse.

Mr. Gonzales expressed remorse for taking the life of this young woman, Bridget Townsend. Although he does not know exactly what he would tell the victim's mother, he wishes that he could speak to her and try to express his regret for his actions, which he tries to understand. He also wishes he had never been involved in drugs or any of this type of behavior in the first place.

Marital history

Although single and never married, Mr. Gonzales does have a daughter. At about 14 years of age, he was in a "relationship" with a woman who was about 19 or 20 years old at the time. She became pregnant and fled the Bandera area. Therefore, Mr. Gonzales has a daughter who is now 24 years of age and has her own daughter. At the time of my interview with Mr. Gonzales, the baby was about 4 months old and lived with her mother, his daughter, in San Antonio, Texas. Therefore, this 39-year-old man is actually a grandfather.

Mr. Gonzales reported that he is now involved in a "relationship" with a woman he met through a pen pal site. She lives in Australia.

Military service

None.

Medical history

He denies any significant medical problems.

Current medication

None.

Religion

Mr. Gonzales reported that he is not a member of any specific organized religious group. However, he does acknowledge that he is "spiritual "and follows a Judeo-Christian spirituality. One of the issues that he mentioned was his pending request that his "spiritual advisor be allowed to be with him and be in physical contact with him if he does face lethal injection."

Current mental status examination

Mr. Gonzales is oriented to time, place, person, and recent events. His fund of general information is actually quite good considering his current incarcerated status. He is very aware of his current situation and he states that he is "attempting to keep up with everything from current events to any changes in the current legal proceedings."

Mood is normal and shows no evidence of significant depression. Affect is appropriate. Mr. Gonzales proved to be quite articulate, and was a more than adequate historian. He maintained excellent eye contact and spoke in a conversational tone. He was responsive to questions and appeared to make a concerted effort to answer my questions in detail. He frequently offered a detail explanation and spontaneously offered supporting information in regard to any opinion or statement offered.

His immediate, recent, and remote memory are all intact and quite good. There is no evidence of thought disorder. Throughout the interview, he denied and did not display any evidence of hallucinations, either auditory or visual, illusions or delusions.

Judgment, in the structured setting of the interview, is adequate. Insight is excellent. Intelligence is estimated as, at least, average. As Mr. Gonzales stated on several occasions, since 2006 and particularly during his confinement on the Polunsky Unit, he has "learned a lot."

Mr. Gonzales is able to both recognize and acknowledge that he has grown/matured both emotionally and intellectually. In his own words: "I'm not the same person I was when a late adolescent." At the end of the interview, he again stated "I'm not the same person nor at all like I was 15+ years ago."

Obviously, at 18 years old this young man was still in a formative stage. Over the years, he has fully matured into an adult with much better reasoning and coping skills and has developed the ability to think through cause-and-effect issues.

Diagnosis

No diagnosis at present time.

Substance utilization

Polydrug, but primarily methamphetamine (by history prior to incarceration).

Discussion and conclusion

Mr. Gonzales's history of criminal behavior is obviously associated with his severe drug addiction/dependency which began when he was a teenager. At the time of this offense in 2001, he was only a few months past his 18th birthday, and his behavior was significantly affected by his self-medication in the form of drug use and resulting drug-seeking behavior.

Testimony at trial

Upon request of the prosecution in this case, I reviewed investigative documents and interviewed Mr. Gonzales prior to his 2006 trial. I did not produce a written report at that time. Following my initial assessment of Mr. Gonzales and the records provided to me by the State, I testified during the penalty phase of his trial on September 1, 2006.

At the time of the trial, I testified that it was my opinion that he would pose a risk to continue to commit threats or acts of violence. I also testified that, "[I]n my opinion, certainly there is antisocial personality disorder present here." *State of Texas v. Ramiro Gonzales*, Trial Transcript Volume 41 at p. 70.

As I told the jury, "This is not a mental illness, but it's the way that person's personality is formed." Trial Transcript Vol. 41 at p. 69. I explained:

> An antisocial person knows their conduct is wrong, but they either don't care or they have these self-serving reasons to obtain whatever their goal is ... so it certainly has nothing to do with not knowing what you are doing. It's just a pattern of behavior that is maladaptive. The person just acts that way because that's the way they are.

When questioned by the prosecution if there were "sadistic qualities" of the instant offense, I mentioned, among other things, that [I]f you go back to view that person, knowing that they are out there and you go back to that scene, that ... has a psychosexual sadistic component to it." Trial Transcript Vol. 41 at p. 77. "[I]t would be unlikely that a person, in my opinion, who would commit that type

of act and that type of fashion... would volitionally just stop that behavior because they obviously derive some pleasure and some gratification from that. It would not be expected, based upon reasonable psychiatric probability, that they are just going to change that, after having done something like that." Trial Transcript Vol. 41 at p. 78.

The fact that he committed two sexual offenses, including the offense in which Babo Teich was a victim, constituted "a pattern of behavior [that] raises a question, at least, of some type of significant underlying psychosexual disorder. It raises the question of a sexual predator, like someone who is seeking a series of victims and who is praying upon women." Trial Transcript Vol. 41 at p. 82.

With regards to his potential for rehabilitation, I agreed with the prosecutor that records indicated that he denied that either offense had occurred, and such denials have "a negative impact on any attempt of rehabilitation or treatment." Trial Transcript Vol. 41 at p. 84.

In regard to sexual assault in particular, I testified: "There is a very high incidence of continued reoffending in those cases," Trial Transcript Vol. 41 at p. 86, and that "sexual assault has the highest Continuum of recidivism" and "sexual offenses are the hardest to treat" of all felony offenses. Trial Transcript Vol. 41 at p. 87. As I told the jury: "Those who have psychosexual disorders [...] Pedophiles, rapists, the people who have sexual related offenses have the most difficulty with treatment, and they have an extremely high rate of reoccurrence." When the prosecutor asked for data, I explained that "there is lots of data out there about the person who commits forcible rape and the likelihood that they will continue that. The percentages are way up in the eighty percentile or better." Trial Transcript Vol. 41 at p. 88.

Finally, I described Mr. Gonzales as "a man here who has demonstrated a tendency to want to control, to manipulate and to take advantage of certain other individuals. I don't see how one could believe that that's going to change in a prison." Trial Transcript Vol. 41 at p. 94.

Conclusions based on current evaluation

At Mr. Gonzales's trial, I testified that his offense displayed sadistic tendencies, and opined that he posed a significant risk of future acts of violence. Regarding the likelihood of recidivism for sexual offenses, I testified that there is lots of data

out there about the person who commits forcible rape and the likelihood that they will continue that. The percentages are way up in the eighty percentile or better." Trial Transcript Vol. 41 at p. 88.

However, we now know this statistic to be inaccurate. A 2015 article traced the origins of the 80 percent sex offender recidivism rate to a "bare assertion" in a 1986 article in Psychology Today, authored by a counselor with no credentials in empirical research, that contained no citations or references to recidivism studies and was unsubstantiated by any data.[1] In fact, peer-reviewed statistical studies have shown that the actual recidivism rate for sex offenses is much lower; a 2018 comprehensive survey of longitudinal studies found recidivism rates below 20% after 25 years.[2] In particular, studies have consistently found substantially lower rates of sexual recidivism among juveniles or young offenders, such as Mr. Gonzales, than among older adult sex offenders.[3]

Furthermore, my review of the records provided to me by the prosecution revealed that, while in jail prior to trial, a fellow jail inmate, Frederick Lee Ozuna, claimed that Mr. Gonzales made statements to him about the offense and about returning to the crime scene several times to have sex with Townsend's deceased body. That was, to say the least, a significant piece of information regarding consideration of "future danger" at the time.

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[1] Ellman, I, and Ellman, T. (2015). "Frightening and High": The Supreme Courts Crucial Mistake About Sex Crime Statistics, *Constitutional Commentary* (30), 419. https://scholarship.law.umm.edu/concomm/419. See also David Feige, When Junk Science About Sex Offenders Infects the Supreme Court, *The New York Times* (Sept. 12, 2017), available at https://nytimes.com/2017/09/12/opinion/when-junkscience-about-sex-offenders-infects-the-supreme-court.html ("The 80 percent recidivism rate is an entirely invented number.")

[2] Hanson, R.K., Harris, A.J.R., Letourneau, E., Helmus, L.M., and Thorton, D. (2018). Reductions in risk based on time offense-free in the community: Once a sexual offender, not always a sexual offender. Psychology, Public Policy, and Law 24 (1) 48-63.

[3] Caldwell, M.F. (2007) Sexual offense adjudication and sexual recidivism among juvenile offenders. Sexual Abuse, 19 (2), 107-113; Caldwell, M.F. (2010). Study characteristics and recidivism base rates in juvenile sex offender recidivism. International Journal of Offender Therapy and Comparative Criminology, 54 (2), 197-212; Caldwell, M.F., (2016) . Quantifying the decline in juvenile sexual recidivism rates. Psychology, public policy, and law, 22 (4), 414-426.

However, Mr. Ozuna has since recanted those statements. He has sworn that his statements and trial testimony about them were false, and that Mr. Gonzales did not make statements like this to him. Furthermore, during our interview in September 2021, Mr. Gonzales vehemently denied that this occurred. Based on my assessment of Mr. Gonzales, I believe these denials are credible.

At the time of the commission of this offense Mr. Gonzales was barely 18 years old. With the passage of time and significant maturity he is now a significantly different person both mentally and emotionally. This represents a very positive change for the better.

At the current time, considering all of the evidence provided to me, my evaluation of Mr. Gonzales, and his current mental status, it is my opinion, to a reasonable psychiatric probability, that he **does not** pose a threat of future danger to society in regard to any predictable future acts of criminal violence.

I would be happy to answer any specific questions that might arise in regard to my assessment of this individual. If I can be a further assistance in this matter, please do not hesitate to contact me through my office address listed above.

Edward B. Gripon, M.D.

APPENDIX E

Cause No. WR-70,969-03

Trial Court Cause No. 04-02-09091-CR

	§	IN THE 454TH DISTRICT
Ex parte	§	
RAMIRO FELIX GONZALES	§	OF
Applicant.	§	
	§	MEDINA COUNTY, TEXAS

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Before this Court is a subsequent habeas application. The Court of Criminal Appeals has authorized this Court to consider "a portion of Claim 1," contained therein, "that testimony of recidivism rates [Dr. Edward] Gripon gave at trial were false and that false testimony could have affected the jury's answer to the future dangerousness question at punishment." To do so, the Court has carefully considered the filings and evidence submitted in this postconviction proceeding bearing on the authorized claim, and the official court records for Applicant's capital murder trial. After considering these records, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

Indictment

1. Applicant, Ramiro Felix Gonzales, was indicted for the capital murder of Bridget Townsend. It was alleged that Applicant intentionally and fatally shot Townsend during the course of committing, or attempting to commit, aggravated sexual assault,

kidnapping, or robbery of Townsend on or about January 15, 2001. 1.CR.8–9.

Guilt-Innocence Evidence

2. The evidence showed that the victim, Townsend, had been missing for almost two years when Applicant, jailed on unrelated charges, approached the local sheriff and led him to a set of partial skeletal remains, later identified through dental examination as Townsend's, furthered by the nearby discovery of a distinctive ring, identified as Townsend's by one of her longtime friends. 35.RR.60–77, 36.RR.154–64; 37.RR.99–104.

3. Amongst other evidence admitted was Applicant's written confession. In it, Applicant admitted to burglarizing the home Townsend shared with her boyfriend, Joe Leal, who was also Applicant's drug dealer. Townsend was home when Applicant began ransacking the house, looking for money and drugs, and when she threatened to call the police, Applicant knocked her down and bound her hands and feet. Applicant then took Townsend to the ranch he lived on with his grandparents, intending to kill her because she could identify him as a burglar and kidnapper. After grabbing a rifle, he untied Townsend and walked her into the brush. While loading his weapon, Townsend began crying for her mom and pleading with Applicant. Townsend offered money, drugs, and finally said she'd have sex with Applicant if he wouldn't kill her. Applicant agreed to the latter and emptied his rifle. After Applicant finished having sex with Townsend, whom he admitted was afraid for her life, Applicant reloaded the rifle and walked Townsend back into the brush. Townsend repeatedly asked why Applicant was going to kill her and she pleaded for her mother. Applicant did not respond, but instead shot Townsend from about three feet away and heard her body hit the ground with "a big thump." He went back with his "family like nothing ever happened." A couple months later, he returned to the scene and saw Townsend's body decaying. 44.RR.SX.8.

4. Applicant also confessed to a TV news reporter, confirming that he kidnapped and killed Townsend because she was a witness, and that she begged for her mother. 35.RR.39–55.

5. Applicant further confessed to a jailer that he murdered the woman he was alleged to have killed, that he planned the murder, that he raped her before the murder, and that he returned to the body at least once. 37.RR.105–07.

6. The jury found Applicant guilty of capital murder on August 25, 2006. 38.RR.53–54.

State's Punishment Evidence

7. The State's evidence showed that Applicant told a fellow inmate, Frederick Lee Ozuna, that he tortured Townsend and forced her to "fulfill his sexual fantasies." Applicant also told him that Townsend had tried to escape, but that he caught her and beat her for the attempt. 39.RR.184–89.

8. Shortly after murdering Townsend, Applicant began stalking a teenage girl. This included appearing outside the family's home at all hours and sometimes scratching at their windows at night. The girl's mother testified that when she confronted Applicant, he said that she couldn't keep him away from her daughter. On another occasion, Applicant threatened to kill her. 40.RR.50–63.

9. Thereafter, Applicant kidnapped Florence "Babo" Teich at knifepoint and took her to a cabin on the ranch where he resided. Despite begging Applicant not to rape her, he repeatedly did so. Applicant placed a naked and bound Teich in a locked closet so he could leave the cabin, and she was able to escape and contact law enforcement. When authorities went to the cabin, they spotted Applicant in Teich's truck, and he led them on a 35- to 45-minute chase before crashing into a tree. 40.RR.71–98, 127–41.

10. While in jail, Applicant threatened the lives of two jailers; he was found with numerous contraband items, including a wooden "shank" and a razor blade; he started a fire in his cell, causing the partial evacuation of the jail; he stole another inmate's prescription

medication through intimidation and beat another over a dispute regarding a TV show; and he admitted, in a recorded phone call, to being a threat to the jail's general population. Seven jailers agreed with Applicant, expressing the opinion that he would be a threat in prison. Applicant also told Ozuna how he planned to escape from jail and how he would kill any jailer he did not like. 39.RR.19–23, 34, 37–38, 44, 51–52, 75–77, 93, 101, 123, 168–79, 189–91; 40.RR.6–8, 15–16, 36–38, 45.

11. Despite pleading guilty to the kidnapping and rape of Teich, Applicant denied committing the offenses when interviewed by a reporter, claiming that Teich made up the allegations and said it was a consensual encounter. He also admitted to the reporter that he did not listen to Teich during her victim impact statement because he only cared about his family. During that interview, Applicant denied knowing Townsend and said he wouldn't kill a person. At a later interview with the same reporter, he admitted to killing Townsend but "didn't feel any different at all" after confessing to her murder. Applicant also told Ozuna that he did not regret murdering Townsend and that he would do it again because he enjoyed it. A jailer testified that he had not seen any remorse from Applicant, but that he fit in rather well with his fellow inmates. Applicant also showed no remorse for setting a fire in in the jail despite placing his fellow inmates in danger. Applicant, in recorded phone calls, also said that he believed jailers deserved to be hurt and that they were at fault for the assault of a fellow inmate because they knew Applicant was a threat to the general population. 39.RR.77, 103; 40.RR.25, 36–38, 188–89, 142–46.

12. Applicant told one jailer that he would kill animals simply to watch them decay, and he noted that a human body decays faster than an animal. He told a mental health professional that he was obsessed with dead bodies. And he filled out a jail "sick call slip," saying that he "went back almost every day to see [Townsend's] body rot away. It's something I like doing. All my life I lived on a ranch and I would kill all kinds of animals just to see the corpse rot away. After seeing the human body rot away, well, that little bitch won't get out of my head." 39.RR.16–18, 31, 135–41.

13. Applicant had prior convictions for felony theft, forgery, burglary of a habitation, kidnapping, and aggravated sexual assault, the latter two resulting from the abduction and rape of Teich. 39.RR.13–14; 40.RR.118–21.

14. Finally, Dr. Edward Gripon, a forensic psychiatrist, testified that: past conduct is the best predictor of future violence; Applicant had a substantial history of violent conduct as a minor; Applicant committed two violent felonies as a young adult; Applicant's pattern of violence appeared to be escalating; he likely had Antisocial Personality Disorder; Applicant's self-reported trips back to watch Townsend's body decompose suggested he found pleasure in the offense there was a psychosexual sadistic component to it; Applicant's crimes did not appear to be driven by drug abuse; Applicant's unwillingness to take responsibility suggested there was little hope for successful treatment or rehabilitation; sexual offenses are the hardest to treat medically; there is a high recidivism rate for forcible rape; persons with a history of aggressive behavior often have difficulty in a prison setting; Applicant's criminal history suggests a focus on vulnerable victims; it was not within the realm of reasonable psychiatric probability that Applicant would voluntarily stop his sexual offenses; and he believed Applicant posed a threat of violence even in the prison setting. 41.RR.50–121.

Applicant's Punishment Evidence

15. Thomas Keese, the long-time ranch manager of the ranch where Applicant lived, testified that Applicant's mother left him with her parents, Applicant's grandparents, when he was an infant and rarely visited, and that Applicant's father was not in the picture at all. Applicant, even as a toddler, had little supervision on the ranch while his grandparents worked. Applicant was well-liked at school but had little educational help and encouragement at home so he quit school in the seventh or eighth grade. Around this same time, Applicant began to display behavior inconsistent with his typical polite demeanor, including belligerently swearing at Keese. Keese believed that Applicant's change in behavior was the result of drugs. He also believed that Applicant would not have committed

his crimes had he stayed in school and avoided drugs. Keese said that Applicant was an excellent artist and that he could do good works while in prison, including sharing his newfound but honest conviction in Christianity. 41.RR.124–83.

16. Vicky Wilson, Applicant's aunt, testified that Applicant's mother, then a teenager, "huff[ed] paint" while pregnant with Applicant. She left Applicant with his grandparents shortly after his birth and, while she had occasionally visited, she never acknowledged or showed affection towards Applicant. Wilson said she witnessed Applicant's mother's then-boyfriend physically abuse Applicant and had a "feeling" that a cousin sexually abused him as well. As a child, Applicant was good at sports but had to quit because of "no pass-no play" rules and eventually dropped out of school in the eighth grade, at age fifteen. A couple years later Applicant's favorite aunt died, and he became a "loner." Wilson believed that Applicant had honestly found religion while incarcerated, that he was a different person off drugs and that he could be rehabilitated. 41.RR.152–70.

17. Emma Smythe, another aunt, testified that while pregnant, Applicant's mother drank alcohol and smoked marijuana, and Smythe never witnessed Applicant's mother receive prenatal care. She also never saw Applicant with his mother and witnessed, on three or four instances, Applicant's mother's then-boyfriend cornering Applicant, making him go silent like he was in "shock." 41.RR.187–95.

18. Sammy Joe Sanchez, who thought his brother was Applicant's father, also saw Applicant's mother "huff[] paint" on many occasions. 41.RR.199–205.

19. Jessica Lynn Keegan, Applicant's cousin and Smythe's daughter, grew up with him on the ranch. She testified that Applicant began drinking at twelve and did drugs as a teenager. She recalled that Applicant got very little attention growing up, his mother was not in his life, and he quit school at sixteen. She also stated that Applicant's mother's boyfriend was not "a nice person" and was verbally abusive to Applicant. Between ages twelve to fourteen, Applicant had a sexual relationship with an eighteen-year-old

woman who had a baby by him but "disappear[ed]" to avoid prosecution. Keegan also said that Applicant lost "a mother-figure" when his favorite aunt died. She said that Applicant was good at hunting and fishing and had worked for her father, who "wouldn't have paid him his paycheck if he wasn't working." Keegan felt that Applicant had been "lost in the system" and, had someone in authority intervened in his life, he would not have committed his crimes. 41.RR.207–26.

20. Dr. Daneen Milam, a neuropsychologist, conducted a full neuropsychological examination of Applicant and determined that he did not have any brain damage. She, instead, found him to be immature and developmentally delayed. Based on her investigation, Applicant raised himself without parental support, which contributed to his immature behavior because he had little opportunity to learn adult behavior. Based on his history of limited parental interaction and nurturing, Dr. Milam diagnosed Applicant with reactive attachment disorder with antisocial personality features. She said this was a "very sad disorder" because its causation is "100 percent environment" and such diagnosis "is very debilitating as an adult." Those with reactive attachment disorder have grown up without "norms and guidelines and standards," which causes them to be insecure and needy. They also tend act with bravado, seek attention, and attempt to be manipulative but rarely succeed, which is consistent with Applicant's history. Indeed, Dr. Milam thought Applicant was "probably . . . in top ten percent of [emotionally] damaged kids." 42.RR.3–73.

21. Finally, Larry Fitzgerald, a former Texas Department of Criminal Justice public information officer, testified that, based on his research, Applicant was a well-behaved inmate while housed in state prison, as opposed to county jail, and his good behavior earned him "trustee" status. Fitzgerald also mentioned that inmates in state prison are closely monitored gave a detailed account of the process leading up to an execution from an inmate's perspective. 42.RR.122–48.

22. The jury answered the submitted special issues in such a way that Applicant was sentenced to death on September 6, 2006. 43.RR.77–79.

Relevant Postconviction Litigation

23. The Court of Criminal Appeals (CCA) affirmed Applicant's conviction and sentence on June 17, 2009. *Gonzales v. State*, No. AP-75,540, 2009 WL 1684699 (Tex. Crim. App. June 17, 2009).

24. The CCA denied Applicant habeas relief on September 23, 2009. *Ex parte Gonzales*, No. WR-70,969-01, 2009 WL 3042409 (Tex. Crim. App. Sept. 23, 2009).

25. The Supreme Court denied Applicant a writ of certiorari from his direct appeal on February 22, 2010. *Gonzales v. Texas*, 559 U.S. 942 (2010).

26. The CCA dismissed Applicant's first subsequent application as an abuse of the writ on February 1, 2012. *Ex parte Gonzales*, Nos. WR-70,969-01, WR-70,969-02, 2012 WL 340407 (Tex. Crim. App. Feb. 1, 2012).

27. The CCA reopened Applicant's initial habeas proceeding on February 1, 2012, *Ex parte Gonzales*, Nos. WR-70,969-01, WR-70,969-02, 2012 WL 340407 (Tex. Crim. App. Feb. 1, 2012), and denied relief again on June 27, 2012, *Ex parte Gonzales*, No. WR-70,969-01, 2012 WL 2424176 (Tex. Crim. App. June 27, 2012).

28. The United States District Court for the Western District of Texas denied Applicant federal habeas relief on January 15, 2014. *Gonzales v. Stephens*, No. SA-10-CA-165-OG, 2014 WL 496876 (W.D. Tex. Jan. 15, 2014).

29. The United States Court of Appeals for the Fifth Circuit affirmed the denial of federal habeas relief by declining to grant a certificate of appealability on April 10, 2015. *Gonzales v. Stephens*, 606 F. App'x 767 (5th Cir. 2015).

30. The Supreme Court denied Applicant a writ of certiorari from his federal habeas appeal on December 7, 2015. *Gonzales v. Stephens*, 577 U.S. 1032 (2015).

31. Applicant's execution was set for August 10, 2016. Order Setting Execution Date, *State v. Gonzales*, No. 04-02-09091-CR (38th Dist. Ct., Medina County, Tex. Apr. 6, 2016).

32. Applicant's execution date was modified, the new date being November 2, 2016. Amended Order Setting Execution Date, *State v. Gonzales*, No. 04-02-09091-CR (38th Dist. Ct., Medina County, Tex. July 13, 2016).

33. Applicant's execution date was withdrawn on September 30, 2016. Order, *State v. Gonzales*, No. 04-02-09091-CR (38th Dist. Ct., Medina County, Tex. Sept. 30, 2016).

34. Applicant attempted to reopen his federal habeas proceeding, but that request was denied by the Western District of Texas Court on July 3, 2018. Order on Motion for Relief from Judgment, *Gonzales v. Stephens*, No. SA-10-CA-165-OG (W.D. Tex. Jan. 15, 2014), ECF No. 54.

35. The Fifth Circuit affirmed the denial of reopening on September 17, 2019. *Gonzales v. Davis*, 788 F. App'x 250 (5th Cir. 2019).

36. The Supreme Court denied Applicant's petition for writ of certiorari, challenging the Fifth Circuit's affirmance of the denial of reopening, on May 18, 2020. *Gonzales v. Davis*, 140 S. Ct. 2771 (2020).

37. Applicant was again set for execution, specifically April 20, 2021. Order Setting Execution Date, *State v. Gonzales*, No. 04-02-09091-CR (454th Dist. Ct., Medina County, Tex. Sept. 14, 2020).

38. Applicant's then-execution date was modified to November 17, 2021. Order Modifying and Setting Execution Date, *State v. Gonzales*, No. 04-02-09091-CR (454th Dist. Ct., Medina County, Tex. Apr. 6, 2021).

39. Applicant's modified execution date was modified again, to July 13, 2022. Execution Order, *State v. Gonzales*, No. 04-02-09091-CR (454th Dist. Ct., Medina County, Tex. Oct. 20, 2021).

The Present Application

40. On June 30, 2022, less than two weeks before Applicant's then-present execution date, he filed a second subsequent state habeas application raising three claims. Subsequent Application for Writ of Habeas Corpus Pursuant to Tex. Code Crim. Proc. Art. 11.071, *Ex parte Gonzales*, No. 04-02-09091-CR (454th Dist. Ct., Medina County, Tex. June 30, 2022) (Sub. Appl.).

41. On July 11, 2022, the CCA stayed Applicant's then-present execution date and remanded a very narrow portion of his first claim for resolution—whether "testimony of recidivism rates [Dr.] Gripon gave at trial were false and [whether] th[is] false testimony could have affected the jury's answer to the future dangerousness question at punishment." *Ex parte Gonzales*, No. WR-70,969-03, 2022 WL 2678866, at *1 (Tex. Crim. App. July 11, 2022). The Court refers to this claim as the "remanded false testimony claim." Only "[t]his aspect of Claim 1 [was] remanded" and the other claims "should not be reviewed." *Id.* Two judges dissented. *Id.*

42. On October 27, 2022, the State timely answered, responding to the portion of Claim 1 remanded by the CCA. State's Answer, *Ex parte Gonzales*, No. 04-02-09091-CR (454th Dist. Ct., Medina County, Tex. Oct. 27, 2022).

43. On November 30, 2022, this Court determined that there were no controverted, previously unresolved factual issues material to the legality of Applicant's findings. Order, *Ex parte Gonzales*, No. 04-02-09091-CR (454th Dist. Ct., Medina County, Tex. Nov. 30, 2022). The Court ordered the parties to file proposed findings of fact and conclusions of law.

Laches

44. It has been approximately 22 years since Townsend was murdered.

45. It has been approximately 16 years since Applicant was convicted and sentenced to death.

46. It has been approximately 12 years since Appellant's direct appeal became final.

47. Given these extraordinary lengths of time, it is presumed that the witnesses who testified at trial have diminished memories.

48. The primary basis for Applicant's remanded false testimony claim is a 2015 law journal article. Sub. Appl. 30–32 (citing Ira Mark Ellman & Tara Ellman, *"Frightening and High": The Supreme Court's Crucial Mistake About Sex Crime Statistics*, 30 Const. Comm. 495 (2015) [hereinafter *Frightening and High*].

49. Given that the primary basis for Applicant's remanded false testimony claim was published in 2015, Applicant could have brought this claim at least seven years ago.

50. The authors of *Frightening and High* did minimal work tracking down the provenance of the 80% recidivism statistic—they did a Google search and checked citations in publicly available Supreme Court briefs, *Frightening and High*, *supra* 497–98 & n.14, in cases decided in 2002 and 2003, respectively, *id.* at 496 (citing *Smith v. Doe*, 538 U.S. 84 (2003) and *McKune v. Lile*, 536 U.S. 24 (2002)).

51. Applicant could have, with minimal work exercised by the authors of *Frightening and High*, discovered the underlying challenge to Dr. Gripon's recidivism testimony years before trial, and years before his state habeas applications.

52. One of his present counsel has been federally appointed counsel for more than a decade. Order Appointing Counsel and Setting Deadlines 2–4, *Gonzales v. Lumpkin*, No. SA-10-CA-165-OG (W.D. Tex. Mar. 2, 2010), ECF No. 2. More than four years ago, the Capital Habeas Unit (CHU) of the Northern District of Texas was appointed as co-counsel, Order Appointing Counsel 1–2, *Gonzales v. Lumpkin*, No. SA-10-CA-165-OG (W.D. Tex. June 1, 2018), and their office has significant legal and investigatory resources, *see Contact Us – Dallas Office, Federal Public Defender*, Northern

District of Texas, https://txn.fd.org/content/dallas-office (last visited Jan. 12, 2023) (listing one CHU supervising attorney, four CHU assistant attorneys, five CHU research and writing attorneys, two CHU mitigation specialists, three CHU paralegals, and two CHU investigators). He received even more resources when the Capital Punishment Clinic at the University of Texas School of Law began representing him, bringing aboard professors and student advocates. *See* Sub. Appl. 130; *see also Capital Punishment Clinic Faculty File Clemency Petition for Ramiro Gonzales*, The University of Texas at Austin School of Law, https://law.utexas.edu/clinics/2022/06/20/gonzales-clemency-petition/ (last visited Jan. 12, 2023).

53. Applicant had ample time and resources to raise the remanded false testimony claim in his initial and first subsequent applications.

54. Equity does not favor raising a claim on the eve of his execution, despite having ample time, resources, and the factual and legal availability of the claim.

Procedural Bar

55. As described above, it took little effort for the authors of *Frightening and High* to question the provenance of the 80% recidivism statistic. This minimal work—reading a couple briefs and performing an internet search—could have been done well before Applicant's trial.

56. Applicant could have discovered the underlying factual bases of Dr. Gripon's recidivism testimony with minimal work. *See* Tex. R. Evid. 705(b).

57. Applicant could have discovered the supposed falsity of Dr. Gripon's recidivism testimony and objected to it at trial but did not do so.

58. Claims of false testimony were available at the time of Applicant's trial and appeal. *Ex parte Carmona*, 185 S.W.3d 492, 496–97 (Tex. Crim. App. 2006); *Haliburton v. State*, 80 S.W.3d 309, 315 (Tex. App.—Fort Worth 2002, no pet.) ("Although Appellant now complains that these two witnesses lied under oath, he failed to lodge an objection of any kind when the two testified."); *Fitts v.*

State, No. 07-96-0429-CR, 1998 WL 17741, at *8 (Tex. App.—Amarillo Jan. 13, 1998, pet. ref'd) (noting that the appellant failed to object at trial to the supposedly perjurious testimony "although the information about [the] changed story as before appellant at the time").

59. Applicant could have objected at trial to Dr. Gripon's recidivism testimony on the legal ground that it was false and could have raised a false testimony claim on direct appeal.

Alternative Merits of Remanded False Testimony Claim

60. At trial, Dr. Gripon testified that sexual assault "has a high degree of reoccurrence or recidivism," and that "[i]t's above the fifty-one percentile." He explained that, "if a person starts sexually assaulting individuals, then they will generally continue that until they are stopped in some way or in some matter." Expounding, he stated that "there is lots of data out there about the person who commits forcible rape and the likelihood that they will continue that. The percentages are way up in the eighty percentile or better." 41.RR.75–76, 88.

61. On cross-examination, Dr. Gripon admitted that all the information he reviewed had been furnished by the State and he did not independently investigate Applicant's background by contacting members of his family. He further admitted that predictions of future dangerousness are "highly contentious," "highly controversial," and that the "American Psychiatric Associations finds that such an effort is unreliable and unscientific." And he admitted that he never checked to see whether his prior predictions were correct. 41.RR.99–108.

62. Dr. Gripon's testimony about recidivism rates spans a few lines over three pages of transcript. In contrast, the State's cases in chief in guilt-innocence and punishment spans nearly a thousand pages. *Compare* 41.RR.75–76, 88, *with* 35.RR.39–233; 36.RR.4–165; 37.RR.4–110; 39.RR.12–197; 40.RR.3–167; 41.RR.50–121.

63. The State, during punishment closing argument, mentioned Dr. Gripon only twice, sex offender recidivism only once, and no mention of any specific statistics. 43.RR.54–55, 69–70.

64. For the most part, Applicant attempts to prove Dr. Gripon's recidivism testimony false by using more current studies. *See* Sub. Appl. 32 (citing 2017 and 2019 studies).

65. Applicant implicitly admits that a *Psychology Today* article, with an 80% sex offender recidivism statistic, existed at the time of his trial. Sub. Appl. 30–31. Applicant further implicitly admits that other studies, just a few years before trial, included a 51.8% recidivism rate amongst sex offenders. *Id.* at 29 n.7.

66. Applicant fails to prove that Dr. Gripon's recidivism statistics were false when he testified to them.

67. Determining the objective truth about recidivism rates is impossible. Roger Przybylski, *Recidivism of Adult Sexual Offenders* at 1, Sex Offender Mgmt. Assessment & Plan. Initiative (U.S. Dep't of Just., Off. of Sex Offender Sentencing, Monitoring, Apprehending, Registering, & Tracking, July 2015) ("[R]ecidivism of sex offenders is difficult to measure. The surreptitious nature of sex crimes, the fact that few sexual offenses are reported to authorities, and the variation in the ways researchers calculate recidivism rates all contribute to the problem.").

68. "[T]here is widespread recognition that the officially recorded recidivism rates of sexual offenders are a diluted measure of reoffending." *Recidivism of Adult Sexual Offenders* at 2.

69. Comparing older studies, including ones that existed at the time of Applicant's trial, "to offenders who engage in rape behavior today is problematic because . . . sex offender treatment and management practices were far different then they are today." *Recidivism of Adult Sexual Offenders* at 2.

70. Given the difficulties in determining a true recidivism rate for sex offenders, recognition that present statistics undercount, and the difficulties comparing older studies to newer ones, Applicant fails

to prove, by a preponderance of the evidence, that Dr. Gripon's recidivism testimony was false.

CONCLUSIONS OF LAW

Laches

71. Laches is an "equitable doctrine by which a court denies relief to a claimant who has unreasonably delayed in asserting the claim, when that delay has prejudiced the party against whom relief is sought." *Laches, Black's Law Dictionary* (10th ed. 2014).

72. "[L]aches is a theory which [courts] may, and should, employ in . . . determine[ing] . . . whether to grant relief in any given [habeas] case." *Ex parte Carrio*, 992 S.W.2d 486, 488 (Tex. Crim. App. 1999), *overruled in part by Ex parte Perez*, 398 S.W.3d 206 (Tex. Crim. App. 2013). The State is not required "to make a 'particularized showing of prejudice,'" but may rely on "anything that places the State in a less favorable position, including prejudice to the State's ability to retry a defendant[.]" *Ex parte Perez*, 398 S.W.3d at 215. This includes "the diminished memories of trial participants and the diminished availability of the State's evidence[.]" *Id.* at 216. "[T]he longer an applicant delays filing his application, and particularly when an applicant delays filing for much more than five years after conclusion of direct appeals, the less evidence the State must put forth in order to demonstrate prejudice." *Id.* at 217–18. This "revised approach comports with th[e CCA's] prior statements that, in determining whether habeas relief is warranted, [courts] must afford adequate weight to the State's broad interest in the finality of a long-standing conviction." *Id.* at 218.

73. Delay over five years is excessive. *See Ex parte Perez*, 398 S.W.3d at 216 (citing with favor a dissenting opinion that advocated a rebuttable presumption of prejudice after a five-year delay). In such an instance, the State's prejudice burden is extraordinarily slight. *Id.* at 219 ("In cases in which an applicant's delay has been excessive, in general, it is more likely that the State will be able to show it has been prejudiced by the delay and that an applicant will

face a difficult task to show why his application should not be barred by laches.").

74. Equity does not favor raising a claim on the eve of his execution, despite having ample time, resources, and the factual and legal availability of the claim.

75. Applicant's remanded false testimony claim is barred by laches.

Procedural Bar

76. "As a general matter, th[e CCA] has long held that a convicted person may not raise a claim for the first time in a habeas-corpus proceeding if he had a reasonable opportunity to raise the issue at trial or on direct appeal and failed to do so." *Ex parte De La Cruz*, 466 S.W.3d 855, 864 (Tex. Crim. App. 2015). "Even claims of a constitutional dimension are 'forfeited [on habeas] if the applicant had the opportunity to raise the issue on appeal. This is because the writ of habeas corpus is an extraordinary remedy that is available only when there is no other adequate remedy at law.'" *Id.* (alteration in original) (quoting *Ex parte Townsend*, 137 S.W.3d 79, 81–82 (Tex. Crim. App. 2004)).

77. The failure to object at trial that Dr. Gripon's recidivism testimony was false, and then raise such a claim on direct appeal, means the remanded false testimony claim is procedurally defaulted because it was not raised at the first available opportunity.

Alternative Merits of Remanded False Testimony Claim

78. The CCA has recognized a due process violation when the State unknowingly uses false evidence. *See, e.g.*, *Ex parte Ghahremani*, 332 S.W.3d 470, 478 (Tex. Crim. App. 2011). An applicant must first prove that the evidence he or she challenges is false. *Id.* at 477. If an applicant makes this showing, the applicant must then prove that, by a preponderance of the evidence, "the error contributed to his conviction or punishment." *Ex parte Napper*, 322 S.W.3d 202, 242 (Tex. Crim. App. 2010). This means that there "is a 'reasonable likelihood that the false testimony affected the applicant's' conviction or sentence." *Ex parte Chavez*, 371 S.W.3d 200, 207 (Tex.

Crim. App. 2012) (quoting *Ex parte Ghahremani*, 332 S.W.3d at 478).

Falsity

79. Given the difficulties in determining a true recidivism rate for sex offenders, recognition that present statistics undercount, and the difficulties comparing older studies to newer ones, Applicant fails to prove, by a preponderance of the evidence, that Dr. Gripon's recidivism testimony was false.

Materiality

80. Applicant fails to demonstrate materiality even if Dr. Gripon's sex offender recidivism testimony was false.

    a. First, Applicant confessed not once, but three times to murdering Townsend, wherein he admitted committing depraved and callous acts—that Townsend pleaded for her life after being kidnapped and marched into the woods, thinking that she would survive after Applicant raped her, to only then be marched back and shot, suffering alone and in the darkness for an unknown amount of time. Shortly thereafter, Applicant stalked a teenaged girl and threatened to kill her mother. Shortly after that, Applicant kidnapped and raped another woman. After being arrested for the latter, Applicant was violent in jail, threatened the lives of jailers, and admitted that he was a threat to other offenders. Further, Applicant demonstrated little remorse over his crimes, had a fascination with death and decay, and Dr. Gripon thought that he would be a future danger.

    b. Second, Dr. Gripon's testimony concerning recidivism rates was only a small fraction of the evidence the State put on concerning punishment, most of which bore on the question of future dangerousness.

    c. Third, the State did not heavily rely upon Dr. Gripon's testimony, or specifically his sex offender statistic testimony, in closing arguments at punishment.

d. Fourth, defense counsel's cross-examination of Dr. Gripon weakened the impact of his testimony. Defense counsel, through such examination, implied that Dr. Gripon was a partisan making a prediction that most other experts would not make, or believe could be made, nor had he bothered to check to see if he was ever right.

RECOMMENDATION

The Court recommends that the remanded portion of Claim 1, referred to as the remanded false testimony claim, be denied.

Signed this 22 day of March, 2023.

Stephen Ables
Presiding Judge
454th District Court
Medina County, Texas