

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
FROM CAUSE NO. 04-02-09091-CR IN THE
454TH JUDICIAL DISTRICT COURT
MEDINA COUNTY**

Per curiam.

ORDER

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

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

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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