IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-59,101-06

EX PARTE WILLIAM KEITH SPEER, Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS CAUSE NO. 99F0506-005-C IN THE 5TH DISTRICT COURT BOWIE COUNTY

Per curiam. **FINLEY, J., filed a concurring opinion in which PARKER, J., joined. Yeary, J., concurred. SCHENCK, P.J., and NEWELL, J., dissented.**

O R D E R

This is a subsequent application for a writ of habeas corpus filed under Texas Code of Criminal Procedure Article 11.071 § 5. Having found that Applicant made a *prima facie* showing under Article 11.071 § 5(a)(3), we remanded a single claim—Claim 4—to the convicting court for a merits review. The court has returned the case with findings of fact and conclusions of law recommending that relief be denied.

In Claim 4, Applicant alleged that trial counsel rendered ineffective assistance at the punishment phase of his 2001 capital murder trial by failing to investigate and present available mitigating evidence. *See Strickland v. Washington*, 466 U.S. 668 (1984); *Wiggins v. Smith*, 539 U.S. 510 (2003); *Rompilla v. Beard*, 545 U.S. 374 (2005). On remand, the convicting court declined to hold an evidentiary hearing, presumed the truth of Applicant's mitigation proffer, found deficient performance, and recommended denying relief for want of prejudice.

We have independently reviewed the entire record. *See Ex parte Garza*, 620 S.W.3d 801, 808 (Tex. Crim. App. 2021). The convicting court's findings of fact are supported by the record, and we adopt them. As the ultimate fact finder, however, we review its conclusions of law independently and adopt only those consistent with this order. *See Garza*, 620 S.W.3d at 808.

First, we assume without deciding that counsel performed deficiently, and we apply the standard most favorable to Applicant: a reasonable probability that, but for counsel's deficient performance, at least one juror would have answered the mitigation special issue in favor of life. *See Strickland*, 466 U.S. at 694; *Andrus v. Texas*, 590 U.S. 806, 822 (2020); *Wiggins*, 539 U.S. at 537–38; *cf. Ex parte Blue*, 230 S.W.3d 151, 162–63 (Tex. Crim. App. 2007).

Second, we assume the truth and admissibility of Applicant's entire mitigation proffer. We credit in full Dr. Ouaou's neuropsychological evaluation and Mary Helen Martinez's declaration, as we do the remainder of the proffer the convicting court presumed true and admissible. We consider this evidence as bearing on the historical facts of Applicant's background and development available to be investigated at the time of trial.

Third, we place no reliance on any inference that the 1991 proceeding predicts how a later jury would assess Applicant's mitigation. The first jury determined only that Applicant committed capital murder for remuneration rather than the lesser offense of murder; because he was a juvenile, a life sentence followed automatically, and that jury never considered mitigation in deciding between life and death or assessed his moral culpability for purposes of punishment.

The question before us is thus a legal one on a presumed-true record, not a matter of credibility or unresolved fact. Crediting the entire proffer, Applicant has not shown a reasonable probability that at least one juror would have answered the mitigation special issue in favor of life. The same trauma-driven susceptibility to domination by others that allegedly mitigates Applicant's culpability also supports

the State's case on future dangerousness. That susceptibility followed Applicant into prison, where—already serving a life sentence for capital murder—he killed again at a prison gang's direction. No single fact is dispositive, and the Eighth Amendment requires a reasoned moral response to the mitigating evidence. *See Penry v. Lynaugh*, 492 U.S. 302, 319 (1989). But on this record the probative force of a capital murder committed while serving a life sentence for capital murder is substantial. *Cf. Wong v. Belmontes*, 558 U.S. 15, 27–28 (2009).

We have considered, not discounted, the full proffer—the neuropsychological evidence of childhood trauma, head injuries, neglect, abuse, and drug exposure; Applicant's placement as a juvenile in adult penal settings; and the corroborating family, school, and prison declarations. *See Garza*, 620 S.W.3d at 809. Having considered all of Applicant's objections, we conclude that none, alone or together, alters the result.

We therefore hold that Applicant has failed to establish entitlement to habeas relief.

IT IS SO ORDERED THIS THE 20 DAY OF AUGUST, 2026.

Publish