



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NOS. WR-67,208-03 and WR-67,208-04

EX PARTE ROBERT MITCHELL JENNINGS, Applicant

**ON APPLICATIONS FOR POST-CONVICTION WRITS OF HABEAS CORPUS
IN CAUSE NO. 506814 IN THE 208TH DISTRICT COURT
HARRIS COUNTY**

Per curiam. KELLER, P.J., and KEASLER, HERVEY, and NEWELL, JJ., dissent.

ORDER

These are post-conviction applications for writs of habeas corpus filed pursuant to the provisions of Texas Code of Criminal Procedure Article 11.071 § 5.

On July 13, 1989, a jury convicted applicant of the offense of capital murder. Pursuant to the jury's answers to the special issues set forth in Texas Code of Criminal Procedure Article 37.071, the trial court sentenced applicant to death. Article 37.071(e). This Court affirmed applicant's conviction and sentence on direct appeal. *Jennings v. State*,

No. AP-70,911 (Tex. Crim. App. Jan. 20, 1993)(not designated for publication). On September 20, 1996, applicant filed his initial post-conviction application for a writ of habeas corpus in the convicting court. On June 16, 2001, applicant filed in the convicting court a “supplement” to that application.¹ This Court received the applications in March 2007.

After reviewing the cases, this Court filed and set two of the ineffective assistance claims from the initial writ application, and it filed and set the single claim raised in the subsequent application. The Court ultimately issued an opinion denying applicant relief. *Ex parte Jennings*, Nos. AP-75,806 and AP-75,807 (Tex. Crim. App. Nov. 26, 2008)(not designated for publication).

Applicant filed his second subsequent application in the trial court on May 4, 2016. In his second subsequent application, applicant asserts that: (1) the State destroyed, lost, or suppressed relevant mitigating evidence; (2) the unconstitutional “nullification” instruction prevented the jury from fully considering and giving effect to certain mitigating evidence; (3) trial counsel were ineffective in failing to discover and present certain mitigating evidence; and (4) the death penalty violates the constitutional prohibition against cruel and unusual punishment.

On July 20, 2016, applicant filed in the trial court a pleading titled a “Supplement to Subsequent Application for a Writ of Habeas Corpus,” in which he raises a claim that “the

¹ Because the “supplement” to the application was filed after the time allowed in Article 11.071 for filing an initial application and because it raised a new claim, the “supplement” was designated a subsequent application.

unconstitutional ‘nullification’ instruction prevented the jury from fully considering and giving effect to mitigating evidence of [his] remorse.” After reviewing applicant’s pleadings, this Court has determined that applicant’s execution should be stayed pending further order of this Court.

IT IS SO ORDERED THIS THE 2ND DAY OF SEPTEMBER, 2016.

Do Not Publish