

of Criminal Appeals entered a stay of execution in Reed's seventh state habeas proceeding. *Ex parte Reed*, No. WR-50,961-07, 2015 WL 831673, at *1 (Tex. Crim. App. Feb. 23, 2015). During the pendency of that stay, Reed filed his eighth and ninth state habeas applications. *Ex parte Reed*, Nos. WR-50,961-08 & WR-50,961-09, 2019 WL 2607452, at *2 (Tex. Crim. App. June 26, 2019); *Ex parte Reed*, 2017 WL 2131826, at *2. As of June 26, 2019, all of Reed's state habeas applications have been either denied or dismissed, and his postconviction DNA appeal has ended. *Ex parte Reed*, 2019 WL 2607452, at *2; *Reed v. State*, 541 S.W.3d 759, 780 (Tex. Crim. App. 2017). This litigation therefore presents no impediment to setting an execution date.

As such, the State respectfully requests that the Court schedule Reed's execution for November 20, 2019. The State has attached a proposed order and a proposed death warrant for the convenience of the Court and District Clerk.

The State would also respectfully request that, to the extent requested by Reed, the Court deny him a hearing on this motion. "[P]ronouncing and imposing sentence and setting the execution date" are "essentially ministerial duties." *State ex. rel. Holmes v. Honorable Court of Appeals for Third Dist.*, 885 S.W.2d 389, 412 (Tex. Crim. App. 1994) (Clinton, J., dissenting), *overruled in part by Ex parte Elizondo*, 947 S.W.2d 202 (Tex. Crim. App. 2002). There is no need to have a hearing for such a ministerial duty, especially given that this is a subsequent execution setting request, Reed has attended two prior hearings on such matters, and Reed is represented by a plethora of attorneys who can make objections, if any, known through briefing.

If the Court decides to hold a hearing on the motion, the State would respectfully request that the Court set it as soon as possible. The State's lead counsel, however, will be out of the office from August 7, 2019 to August 9, 2019. An order would need to be entered by August 21, 2019, for purposes of setting Reed's execution on the date requested by the State.

Respectfully submitted,

BRYAN GOERTZ
Criminal District Attorney
Bastrop County, Texas



MATTHEW OTTOWAY
Assistant Attorney General/
Assistant District Attorney
Bastrop County, Texas
State Bar No. 24047707

Post Office Box 12548, Capitol Station
Austin, Texas 78711
Tel: (512) 936-1400
Fax: (512) 320-8132
Email: matthew.ottoway@oag.texas.gov

Attorneys for the State

CERTIFICATE OF SERVICE


I certify that on July 12, 2019, a true and correct copy of the foregoing document was served through the State's electronic service provider and the Court's electronic filing manager to Reed's counsel of record:

Bryce Benjet
THE INNOCENCE PROJECT
40 Worth Street, Suite 701
New York, New York, 10013
bbenjet@innocenceproject.org

Andrew F. MacRae
LEVATINO | PACE PLLC
1101 S. Capital of Texas Hwy., Building K, Ste. 125
Austin, Texas 78746
amacrae@levatinopace.com

Morris L. Overstreet
ATTORNEY AT LAW
P.O. Box 35
Prairie View, Texas 77446

Michelle L. Davis
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
725 North Avalon Street
Granbury, Texas 76048


MATTHEW OTTOWAY
Assistant Attorney General/
Assistant District Attorney
Bastrop County, Texas
State Bar No. 24047707

PROPOSED EXECUTION ORDER

STATE OF TEXAS	§	IN THE 21ST DISTRICT COURT
	§	
v.	§	OF
	§	
RODNEY REED	§	BASTROP COUNTY, TEXAS

EXECUTION ORDER

You, RODNEY REED, were indicted by the Grand Jury of Bastrop County, Texas, and charged with the offense of capital murder in cause number 8701. On May 18, 1998, a jury in this Court returned a verdict finding you guilty of the offense of capital murder. On May 28, 1998, the same jury in this Court returned answers to the special issues, submitted to the jury at punishment pursuant to Article 37.071 of the Texas Code of Criminal Procedure, and this Court, in accordance with the jury's findings at punishment, assessed your punishment at death. The judgment of this Court was reviewed by the Texas Court of Criminal Appeals on direct appeal and it was affirmed by that court on December 6, 2000, with mandate issued on February 7, 2001. Subsequently, on February 13, 2002, the Court of Criminal Appeals denied your initial application for writ of habeas corpus and dismissed your first subsequent application in cause numbers 50,961-01 and 50,961-02. Your second subsequent application was denied in part and dismissed in part by the Court of Criminal Appeals on December 17, 2008, in cause number 50,961-03. Your third and fourth subsequent applications were dismissed on January 14, 2009, by the Court of Criminal Appeals in cause numbers 50,961-04 and 50,961-05. On July 1, 2009, your fifth subsequent application was dismissed by the Court of Criminal Appeals in cause number 50,961-06. Thereafter, the District Court for the Western District of Texas, Austin Division, denied your federal petition for writ of habeas corpus on September 25, 2012, and the United States Court of Appeals for the Fifth Circuit denied your application for a Certificate of Appealability on January 10, 2014. Afterwards, the Court of Criminal Appeals affirmed the denial of postconviction DNA testing on April 12, 2017, in cause number 77,054, dismissed your sixth subsequent application on May 17, 2017, in cause number 50,951-07, denied your seventh subsequent application in part and dismissed it in part on June 26, 2019, in cause number 50,951-08, and dismissed your eighth subsequent application on June 26, 2019, in cause number 50,951-09. This Court now proceeds with the judgment and sentence in your case and now enters the following order.

IT IS HEREBY ORDERED by this Court that you, RODNEY REED, having been adjudged guilty of capital murder and having been assessed punishment at death, in accordance with the findings of the jury and the judgment of this Court, shall at some time after the hour of 6:00 p.m. on the 20th day of November, 2019, be put to death by an executioner designated by the Director of the Correctional Institutions Division of the Texas Department of Criminal Justice, who shall cause a

substance or substances in a lethal quantity to be intravenously injected into your body sufficient to cause your death and until your death, such execution procedure to be determined and supervised by the said Director of the Correctional Institutions Division of the Texas Department of Criminal Justice.

It is ORDERED that the Clerk of this Court shall issue a death warrant, in accordance with this sentence, to the Director of the Correctional Institutions Division of the Texas Department of Criminal Justice, and shall deliver such warrant to the Sheriff of Bastrop County, Texas to be delivered by him to the Director of the Correctional Institutions Division of the Texas Department of Criminal Justice together with the defendant, RODNEY REED, if not previously delivered.

The Defendant, RODNEY REED, is hereby remanded to the custody of the Sheriff of Bastrop County, Texas, to await transfer to Huntsville, Texas, if not previously delivered, and the execution of this sentence of death.

DONE AND ENTERED this _____ day of _____, 2019.

DOUG SHAVER
Presiding Judge
21st District Court
Bastrop County, Texas

Sitting by Assignment

PROPOSED DEATH WARRANT

DEATH WARRANT

Cause No. 8701

STATE OF TEXAS	§	IN THE 21ST DISTRICT COURT
	§	
v.	§	OF
	§	
RODNEY REED	§	BASTROP COUNTY, TEXAS

TO THE DIRECTOR OF THE CORRECTIONAL INSTITUTIONS DIVISION OF THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE AND TO THE SHERIFF OF BASTROP COUNTY, TEXAS:

On the 18th day of May 1998, the above-named defendant, in the above-styled and numbered cause, was convicted of the offense of capital murder. On the 29th day of May, 1998, the Court sentenced the above-named defendant to death in accordance with the findings of the jury, pursuant to the Texas Code of Criminal Procedure.

The Court, having received the Court of Criminal Appeals’s mandate affirming the above-named defendant’s conviction for capital murder and having received notice of the Court of Criminal Appeals’s denial of the defendant’s initial application for writ of habeas corpus, sentenced the above-named defendant to death for the offense of capital murder and **ORDERS** that the execution be had on Wednesday, the 20th day of November, 2019, at any time after the hour of 6:00 p.m. at the Correctional Institutions Division of the Texas Department of Criminal Justice at Huntsville, Texas.

The Sheriff of Bastrop County, Texas, is hereby commanded to transport the defendant to the Correctional Institutions Division of the Texas Department of Criminal Justice and deliver the defendant, if not previously delivered, and this warrant to the Director of the Correctional Institutions Division of the Texas Department of Criminal Justice for the purpose of executing this warrant, and to take from the Director the proper receipt for the defendant, if not previously delivered, and the sheriff will return the receipt to the office of the District Clerk of Bastrop County, Texas.

The Director of the Correctional Institutions Division of the Texas Department of Criminal Justice is hereby commanded to receive from the Sheriff the defendant, if not previously delivered, and this warrant, and to give his receipt to the Sheriff, and to safely keep the defendant and to execute the sentence of death at any time after the hour of 6:00 p.m. on the day and date specified in paragraph two of this warrant, by causing a substance or substances in a lethal quantity to be intravenously injected into the body of the defendant sufficient to cause death, and

the injection of the substance or substances into the body of the defendant to continue until the defendant is deceased, obeying all laws of the State of Texas with reference to such execution.

Witness my hand and seal of the 21st District Court of Bastrop County, Texas, at my office in the City of Bastrop, Texas, on the _____ day of _____, 2019.

SARAH LOUCKS, DISTRICT CLERK
BASTROP COUNTY, TEXAS

DISTRICT CLERK

RETURN

The Sheriff of Bastrop County, Texas, received this writ on the _____ day of _____, 2019, at _____ M. and executed the same by delivering the within-named defendant, if not previously delivered, in person and this warrant to the Director of the Correctional Institutions Division of the Texas Department of Criminal Justice on the _____ day of _____, 2019, and by taking his receipts for the said defendant, if not previously delivered, and this warrant, which receipts are hereto attached do here now make my return on this writ this _____ day of _____, 2019.

MAURICE COOK, SHERIFF
BASTROP COUNTY, TEXAS

DEPUTY

On this the _____ day of _____, 2019, the following papers related to cause number 8701, styled THE STATE OF TEXAS v. RODNEY REED, were received from the Sheriff of Bastrop County, Texas.

1. One original of **DEATH WARRANT** to be delivered to the Director of the Correctional Institutions Division of the Texas Department of Criminal Justice.
2. One certified Execution Order.

SIGNATURE OF TDCJ OFFICIAL