



**IN THE COURT OF CRIMINAL APPEALS
OF TEXAS**

NO. WR-79,322-04

EX PARTE BLAINE KEITH MILAM, Applicant

**ON APPLICATION FOR POST-CONVICTION WRIT OF HABEAS CORPUS
FROM CAUSE NO. CR-09-066 IN THE 4TH JUDICIAL DISTRICT COURT
RUSK COUNTY**

Per curiam.

ORDER

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 May 2010, a jury convicted Applicant of capital murder for killing his fiancée's 13-month-old daughter. *See* TEX. PENAL CODE § 19.03(a). The jury answered the special

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

issues submitted under Article 37.071. The jury also answered a special issue asking whether Applicant is a person with intellectual disability. In accordance with the jury's answers, the trial court set punishment at death. This Court affirmed Applicant's conviction and sentence on direct appeal and denied his initial Article 11.071 writ. *Milam v. State*, No. AP-76,379 (Tex. Crim. App. May 23, 2012) (not designated for publication); *Ex parte Milam*, No. WR-79,322-01 (Tex. Crim. App. Sept. 11, 2013) (not designated for publication).

On January 7, 2019, Applicant filed his first subsequent writ application in the trial court. Therein, Applicant raised four claims: (1) current scientific evidence regarding the reliability of bite mark comparison evidence contradicts expert opinion testimony presented by the State at Applicant's trial (Claim 1); (2) Applicant's execution would violate the Eighth and Fourteenth Amendments because he is intellectually disabled (Claim 2); (3) the State violated Applicant's right to due process by failing to disclose material exculpatory evidence (Claim 3); and (4) the State obtained Applicant's conviction in violation of due process because he was denied his right to present a defense (Claim 4).

We determined that Applicant's first and second claims satisfied Article 11.071 § 5(a)(1) and remanded those allegations to the trial court for a merits review. *Ex parte Milam*, No. WR-79,322-02 (Tex. Crim. App. Jan. 14, 2019). The trial court entered findings of fact and conclusions of law and recommended that we deny habeas relief on

Claims 1 and 2. After reviewing the record regarding Applicant's two remanded allegations, we found that Applicant was not entitled to habeas relief on either Claim 1 (his bite mark evidence allegation) or Claim 2 (his intellectual disability allegation). We also dismissed Applicant's Claims 3 and 4 as an abuse of the writ. *Ex parte Milam*, No. WR-79,322-02 (Tex. Crim. App. July 1, 2020).

On January 12, 2021, Applicant filed in the trial court his second subsequent habeas application (our -04). He raises two claims in this application in which he asserts that: (1) his execution would violate the Eighth and Fourteenth Amendments because he is intellectually disabled; and (2) the State relied on false testimony in order to obtain a death sentence in his case in violation of the Fourteenth Amendment. After reviewing the record, we have determined that Applicant's first claim meets the dictates of Article 11.071 § 5(a)(3). We therefore stay his execution and remand the intellectual disability claim to the trial court for a review of the claim's merits.

IT IS SO ORDERED THIS THE 15th DAY OF JANUARY, 2021.

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