# IN THE COURT OF CRIMINAL APPEALS OF TEXAS

**NO. WR-56,818-03**

**EX PARTE JOEL ESCOBEDO, Applicant**

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS IN CAUSE NO. 783,728-C IN THE 232ND JUDICIAL DISTRICT COURT HARRIS COUNTY**

***Per curiam*. KEEL, J., not participating.**

**O R D E R**

We have before us a post-conviction application for a writ of habeas corpus filed pursuant to the provisions of Texas Code of Criminal Procedure article 11.071.

In February 1999, a jury found Applicant guilty of capital murder. The jury answered the special issues submitted pursuant to Article 37.071, and the trial court, accordingly, set Applicant's punishment at death. This Court affirmed Applicant's conviction and sentence on direct appeal and denied his initial application for a writ of habeas corpus pursuant to Article 11.071. *Escobedo v. State*, No. AP-73,450, slip op.

(Tex. Crim. App. Feb. 13, 2002) (not designated for publication); *Ex parte Escobedo*, No. WR-56,818-02 (Tex. Crim. App. Jan. 14, 2009).

On June 17, 2003, while his initial application was still pending, Applicant filed in the trial court his first subsequent application for a writ of habeas corpus pursuant to Article 11.071. Therein, Applicant raised two allegations, one of which alleged that he was intellectually disabled under *Atkins*[1] and therefore constitutionally immune from execution. When we received the first subsequent application, we remanded Applicant's *Atkins* claim to the trial court and ultimately denied habeas relief on the allegation. *Ex parte Escobedo*, No. WR-56,818-01 (Tex. Crim. App. June 12, 2013) (not designated for publication).

Applicant filed this his second subsequent writ application in the trial court on April 8, 2019, and we received that application on February 3, 2020. Applicant raises three claims in his application. In his first claim, he alleges that new case law—specifically, the Supreme Court's decisions in *Moore I*[2] and *Moore II*[3]—have invalidated this Court's use of the *Briseno*[4] factors and a certain mode of analysis which was used to adjudicate his earlier *Atkins* claim. In his second claim, Applicant asserts that "new facts" concerning the Fifth Edition of the Diagnostic and Statistical Manual means

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[1] *Atkins v. Virginia*, 536 U.S. 304 (2002).

[2] *Moore v. Texas*, 137 S. Ct. 1039 (2017).

[3] *Moore v. Texas*, 139 S. Ct. 666 (2019).

[4] *Ex parte Briseno*, 135 S.W.3d 1 (2004).

that he can "put forward [evidence that] would prohibit the imposition of the death penalty under [*Atkins*]." In his third claim, Applicant invokes Article 11.073 and alleges that "a change in science means that [he] should be granted immunity from the death penalty[.]"

We have reviewed the application and find that Applicant's first claim satisfies the threshold requirements of Article 11.071 § 5(a)(1). That claim is remanded to the trial court for a review on the merits.[5] The remaining claims do not meet Article 11.071 § 5's requirements and should not be reviewed.

IT IS SO ORDERED THIS THE 24TH DAY OF JUNE, 2020.

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[5] The State has filed in this Court a "Motion to Stay the Proceedings" so that it may file a report from Dr. Leigh D. Hagan in the trial court regarding Applicant's intellectual disability allegation. We dismiss that motion as moot and leave it to the trial court's discretion to determine what evidence is necessary to resolve Applicant's remanded claim.