



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

NO. WR-88,283-01

EX PARTE JASON DELACERDA, Applicant

**ON MOTION FOR EXTENSION OF TIME TO FILE
APPLICANT'S APPLICATION FOR A WRIT OF HABEAS CORPUS
IN CAUSE NO. 21284-A FROM THE 356TH JUDICIAL DISTRICT COURT
HARDIN COUNTY**

YEARY, J., filed a dissenting opinion.

DISSENTING OPINION

Applicant's capital post-conviction application for writ of habeas corpus is presently due to be filed in the convicting court on July 18, 2020. Fearing that he will not be prepared to file his writ application by that date, he has filed a motion for extension of time in this Court, seeking to put off the due date for ninety days. He cites difficulties in the preparation of the writ application occasioned by the present public health crisis—even though current post-conviction writ counsel was appointed to the case in July of 2019, some eight months before the public health crisis became manifest.

Today, the Court grants an extension of 30 days. The sense of that escapes me, since it seems clear enough that the public health crisis will not have resolved itself by then—or even, most likely, within the ninety days that Applicant seeks. In any event, I have elsewhere expressed my view that Section 4A of Article 11.071 does not authorize this Court to grant the extension Applicant seeks. TEX. CODE CRIM. PROC. art. 11.071, § 4A. *Ex parte Colone*, 575 S.W.3d 815, 816 (Tex. Crim. App. 2019) (Yeary, J., concurring). I explained in some detail in *Colone* why Section 4A should not be read to authorize a motion-for-extension-of-time-to-file practice in capital post-conviction 11.071 proceedings. *Id.* Moreover, as I also explained in *Colone*, even when read and applied properly, Article 11.071 will not leave an applicant without recourse to other remedies for excusable failures. *Id.* at 816–17.

For these reasons, and without further ado, I respectfully dissent to the Court’s preemptive grant of an extension of time that is not authorized by our law, and to its failure simply to dismiss Applicant’s motion as unauthorized by the statute.

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