



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-79,322-02

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

This is a subsequent application for a writ of habeas corpus filed pursuant to the provisions of Texas Code of Criminal Procedure Article 11.071, § 5.¹

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 issues submitted under Article 37.071 of the Texas Code of Criminal Procedure. The jury also

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

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 writ filed pursuant to Article 11.071. *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 this, 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); 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). The trial court forwarded the record to us for a determination of whether any of Applicant's subsequent writ claims satisfied Article 11.071, § 5(a).

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.

We have reviewed the record regarding Applicant's two remanded allegations. Based on our review of the record, we find that Applicant is not entitled to habeas relief on either Claim 1 (his bite mark evidence allegation) or Claim 2 (his intellectual disability allegations).

Further, regarding Claim 1, we do not adopt the trial court's findings of fact numbers 29 and 33. Regarding Claim 2, we do not adopt conclusions of law numbers 170 through 177, number 183, or the portion of number 239 that states Applicant's intellectual disability claim is barred under *Teague v. Lane*, 489 U.S. 288 (1989).

Based upon the trial court's findings and conclusions (with the exceptions noted above) and our own review, we deny relief on Claim 1 and Claim 2 of the application, and dismiss Claims 3 and 4 as an abuse of the writ.

IT IS SO ORDERED THIS THE 1ST DAY OF JULY, 2020.

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