



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

NO. AP-76,674

EX PARTE PEDRO SOLIS SOSA, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
IN CAUSE NO. 7729 FROM THE
81ST DISTRICT COURT OF ATASCOSA COUNTY**

***Per curiam.* KELLER, PJ., dissents. YEARY, J., not participating.**

O P I N I O N

This is a subsequent application for writ of habeas corpus in a capital case that Applicant has filed pursuant to Article 11.071, Section 5 of the Texas Code of Criminal Procedure.¹ In it, Applicant has raised claims of actual innocence and intellectual disability. We deemed these two claims to have satisfied Section 5 and remanded the cause to the

¹ TEX. CODE CRIM. PROC. art. 11.071 § 5.

convicting court “to resolve the factual issues raised by the application according to Article 11.071, [S]ections 7 and 9.”² The convicting court held an evidentiary hearing and recommended that we grant Applicant relief on his claim of intellectual disability, and deny relief on his claim of actual innocence.³ We remanded the case again so that the convicting court could reconsider its recommended finding that Applicant was intellectually disabled in light of “the factors we established in *Ex parte Briseno*.”⁴ The convicting court held an additional evidentiary hearing to do so and has again recommended that we grant relief on Applicant’s claim of intellectual disability.

While this application was pending, the United States Supreme Court decided *Moore v. Texas*, and held that the *Briseno* factors, based upon superseded medical standards, create an unacceptable risk that a person with intellectual disabilities will be executed in violation of the Eighth Amendment.⁵ Having reviewed the record in this case, we determine that the trial court’s findings are supported by the record. Relief is granted on Applicant’s

² *Ex parte Sosa*, No. WR-24,852-03, 2006 WL 1266940 (Tex. Crim. App. May 10, 2006) (not designated for publication).

³ With respect to Applicant’s actual innocence claim, he presented testimony at the first hearing from his nephew and co-defendant, Leroy Sosa, in which Leroy recanted his trial testimony that Applicant was his accomplice in the capital murder, asserting instead that a man by the name of Valerio Blandquiz had been his real accomplice. Leroy explained that he had blamed his “slow” uncle because the now-deceased Blandquiz threatened him and his family should he ever reveal Blandquiz’s identity as his true accomplice. The habeas court recommends that we deny Applicant’s actual innocence claim. The habeas court’s findings and conclusions in this regard are supported by the record. *Ex parte Elizondo*, 947 S.W.2d 202, 209 (Tex. Crim. App. 1996).

⁴ *Ex parte Sosa*, 364 S.W.3d 889, 890 (Tex. Crim. App. 2012) (citing *Ex parte Briseno*, 135 S.W.3d 1 (Tex. Crim. App. 2004)).

⁵ *Moore v. Texas*, 137 S.Ct. 1039, 1044 (2017).

intellectual disability claim. Applicant's sentence is reformed to a term of life imprisonment.⁶ All other relief is denied.

Delivered: May 3, 2017

Do not publish

⁶ *Ex parte Van Alstyne*, 239 S.W.3d 815, 824 (Tex. Crim. App. 2007). At the time of Applicant's offense, in 1983, the only available alternative punishment for capital murder was life with the possibility of parole. Life without parole was enacted in 2005. Acts 2005, 79th Leg., ch. 787, §§ 1, 17, pp. 2705, 2709, eff. Sept. 1, 2005.