



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

NO. AP-76,835

IN RE LEE KOVARSKY

**ORDER ON SHOW CAUSE AND CONTEMPT HEARING FOR UNTIMELY
FILED DOCUMENTS IN APPELLANT WILSON'S CASE FROM CAUSE NO.
63490 IN THE 252ND JUDICIAL DISTRICT COURT
JEFFERSON COUNTY**

Per Curiam. PRICE, JOHNSON, and ALCALA, JJ., dissent.

ORDER

Appellant Marvin Lee Wilson was set for execution on Tuesday, August 7, 2012. Counsel filed in the trial court on appellant's behalf on Friday, August 3, 2012, a Chapter 64 motion for DNA testing and a motion for the trial court to withdraw or modify the execution date. The trial court denied both motions on Monday, August 6, and counsel appealed to this Court on Tuesday, August 7, the date of appellant's scheduled execution. In violation of our Miscellaneous Rule 11-003 setting out the exceptions and possible consequences for filing pleadings within the seven days preceding an appellant's execution, counsel Lee Kovarsky

filed an untimely pleading and failed to show good cause for the violation.

Before taking any action pursuant to Miscellaneous Rule 11-003, this Court ordered Kovarsky to appear before it at 9:00 a.m. on Wednesday, January 16, 2013, to offer further explanation and address any questions propounded by the Court about the matter.

After hearing from counsel and considering the record in the case, the Court has determined that counsel Lee Kovarsky has failed to show good cause for the untimely filing. Therefore, we find Kovarsky to be in contempt of this Court and fine him in the amount of \$250.00, payable to the Clerk of this Court. However, we also suspend imposition of the fine for a period of one year. After this time, if Kovarsky has not violated Miscellaneous Rule 11-003 again without good cause, this sanction will be dismissed.

IT IS SO ORDERED THIS THE 16th DAY OF JANUARY, 2013.

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