



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

AP-76,906

EX PARTE ROOSEVELT SMITH, JR., Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 1045419 IN THE 263RD DISTRICT COURT
HARRIS COUNTY

Per Curiam.

O P I N I O N

This is a post-conviction application for writ of habeas corpus filed pursuant to the provisions of Texas Code of Criminal Procedure Article 11.071.

In October 2007, a jury found Applicant guilty of the offense of capital murder. The jury answered the special issues submitted under Article 37.071 of the Texas Code of Criminal Procedure, and the trial court, accordingly, set punishment at death. This Court affirmed Applicant's conviction and sentence on direct appeal. *Smith v. State*, No. AP-75,793 (Tex. Crim. App. September 29, 2010), *cert. denied*, 131 S. Ct. 1815 (2011).

Applicant presents fifteen allegations in his application in which he challenges the validity of his death sentence. In allegation nine, he contends that he is mentally retarded and that his execution would violate the Eighth Amendment. *See Atkins v. Virginia*, 536 U.S. 304 (2002). On April 10, 2012, the trial court adopted the State's Proposed Findings of Fact and Conclusions of Law. The State's expert, Timothy J. Proctor, Ph.D., evaluated Applicant and concluded that he met the three-prong criteria for mental retardation. *See Ex parte Modden*, 147 S.W.3d 293, 296 (Tex. Crim. App. 2004). Based on Proctor's conclusion, the trial court recommends that this Court grant relief on allegation nine. The record supports the trial court's findings and conclusions. Accordingly, we grant relief. We reform Applicant's sentence to life without parole in the Texas Department of Criminal Justice Correctional Institutions Division. Applicant's remaining claims are dismissed as moot.

DELIVERED: November 7, 2012
DO NOT PUBLISH