



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. AP-76,921

PRESTON HUGHES, III, Appellant

v.

THE STATE OF TEXAS

ON MOTION TO STAY FROM CAUSE NO. 511676
IN THE 174TH JUDICIAL DISTRICT COURT
HARRIS COUNTY

Per Curiam. ALCALA, J., joins the opinion of the Court and files a concurring opinion.

O P I N I O N

In May 1989, a jury found appellant guilty of the offense of capital murder. The jury answered the special issues submitted pursuant to Texas Code of Criminal Procedure Article 37.071, and the trial court, accordingly, set appellant's punishment at death. On original submission on direct appeal, this Court reversed appellant's conviction. However, on rehearing, the Court affirmed appellant's conviction and sentence. *Hughes v. State*, 878 S.W.2d 142 (Tex. Crim. App. 1993). Appellant filed his initial post-

conviction application for writ of habeas corpus in the convicting court on October 21, 1990. This Court denied appellant relief. *Ex parte Hughes*, No. WR-45,876-01 (Tex. Crim. App. Sept. 13, 2000)(not designated for publication). Appellant's subsequent habeas application was filed in the trial court on April 24, 2001, and this Court dismissed it on November 14, 2001. *Ex parte Hughes*, No. WR-45,876-02 (Tex. Crim. App. Nov. 14, 2001)(not designated for publication). Appellant filed his second subsequent habeas application in the trial court on July 3, 2012. After filing and setting a *Penry* claim, this Court denied appellant relief on that claim and dismissed his second claim. *Ex parte Hughes*, No. AP-76,869 (Tex. Crim. App. Aug. 29, 2012)(not designated for publication). Appellant's third subsequent application was filed in the trial court on October 29, 2012, and dismissed by this Court on November 5, 2012. *Ex parte Hughes*, No. WR-45,876-07 (Tex. Crim. App. Nov. 5, 2012)(not designated for publication). Appellant's fourth subsequent writ application was filed in the trial court on November 7, 2012, and dismissed by this Court the next day. *Ex parte Hughes*, No. WR-45,876-09 (Tex. Crim. App. Nov. 8, 2012)(not designated for publication).

On November 12, 2012, appellant filed in the trial court a motion for post-conviction DNA testing. The trial court issued findings on November 14, 2012, denying the testing. Today, appellant purports to file an appeal of that denial through our emergency email system. A bare bones notice of appeal appears to have been filed in the trial court. After reviewing the record, we agree with the trial court's determination that

appellant has failed to establish by a preponderance of the evidence that his request for DNA testing was not made to unreasonably delay the execution of his sentence or the administration of justice. *See Skinner v. State*, 122 S.W.3d 808, 813 (Tex. Crim. App. 2003). Therefore, we affirm the trial court's ruling. Appellant's motion to stay his execution is denied.

Delivered: November 15, 2012
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