



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-41,121-02

EX PARTE STEVEN ANTHONY BUTLER

ON APPLICATION FOR WRIT OF HABEAS CORPUS IN CAUSE
NO. 511112 IN THE 185TH JUDICIAL DISTRICT COURT
HARRIS COUNTY

Per Curiam. COCHRAN, J., filed a concurring statement in which HERVEY, and ALCALA, JJ., joined. PRICE, J., filed a dissenting statement in which JOHNSON, J., joined.

ORDER

On November 10, 1988, Applicant was convicted 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. The conviction was affirmed on direct appeal. *Butler v. State*, 872 S.W.2d 227 (Tex. Crim. App. 1994). Applicant's initial writ, *Ex parte Butler*, No. WR-41,121-01, was denied on April 28, 1999. Applicant's first subsequent writ, *Ex parte Butler*, No. WR-41,121-02, in which he claimed

that his execution would violate the Eighth Amendment's prohibition against the execution of the mentally retarded, was denied on June 27, 2007.

After the United States District Court for the Southern District of Texas denied federal habeas relief, Applicant appealed to the United States Court of Appeals for the Fifth Circuit. The record reflects that the Fifth Circuit has entered an order staying its proceedings in Cause Number 09-70003, styled *Butler v. Thaler*, for Applicant to return to state court to present his claim.

This Court denied Applicant's *Atkins* claim in 2007, after Dr. George Denkowski testified for the State at the hearing on the -02 writ application. *See Atkins v. Virginia*, 536 U.S. 304 (2002). In April 2011, Denkowski entered into a Settlement Agreement with the Texas State Board of Examiners of Psychologists, in which his license was "reprimanded." Pursuant to this Settlement Agreement, Denkowski agreed to not accept any engagement to perform forensic psychological services in the evaluation of subjects for mental retardation or intellectual disability in criminal proceedings. Applicant thereafter submitted a suggestion that this Court "reconsider on its own initiative" its denial of his *Atkins* claim. On December 14, 2011, we exercised our authority to reconsider this cause on our own initiative. We remanded this cause to the trial court to allow it the opportunity to re-evaluate its initial findings, conclusions, and recommendation in light of the Denkowski Settlement Agreement.

On February 28, 2012, the trial court signed an order adopting the State's Proposed Findings of Fact and Conclusions of Law which recommended that relief be denied. We

have reviewed the record and the February 28, 2012 findings of fact and conclusions of law.

Based upon the trial court's findings and conclusions and our own review, we deny relief.

IT IS SO ORDERED THIS THE 27TH DAY OF JUNE, 2012.

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