



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

NO. WR-52,120-02

EX PARTE COY WAYNE WESBROOK

**ON APPLICATION FOR WRIT OF HABEAS CORPUS IN CAUSE
NO. 768395 IN THE 228TH DISTRICT COURT
HARRIS COUNTY**

Per Curiam.

ORDER

In June 1998, 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 the conviction and sentence on direct appeal. *Wesbrook v. State*, 29 S.W.3d 103 (Tex. Crim. App. 2000). Applicant filed his initial writ application in the trial court in July 2000, and this Court denied relief on June 26, 2002. *Ex parte Wesbrook*, No. WR-52,120-01 (Tex. Crim.

App. June 26, 2002)(not designated for publication). Applicant filed a subsequent writ application in the trial court in June 2003 in which he raised a claim that his execution was barred because he was mentally retarded. *See Atkins v. Virginia*, 536 U.S. 304 (2002). We determined that the claim met the requirements of Article 11.071, § 5, and remanded it to the trial court for consideration. *Ex parte Wesbrook*, No. WR-52,120-02 (Tex. Crim. App. Sept. 10, 2003)(not designated for publication). The record was subsequently sent to this Court, the Court reviewed it, and we denied relief. *Ex parte Wesbrook*, No. WR-52,120-02 (Tex. Crim. App. Mar. 21, 2007)(not designated for publication).

Applicant has now submitted a request that this Court reconsider this ruling on its own initiative. While the Rules of Appellate Procedure do not permit the filing of a motion for rehearing following the denial of a post-conviction application for writ of habeas corpus, we may on our own initiative choose to exercise our authority to reconsider our initial disposition of a capital writ. *See Ex parte Moreno*, 245 S.W.3d 419, 427-29 (Tex. Crim. App. 2008)(stating that we may choose to exercise this authority only “under the most extraordinary of circumstances”).

This Court denied applicant’s *Atkins* claim in 2007, after Dr. George Denkowski acted as the State’s expert witness on the subsequent writ application. 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. In light of this Settlement Agreement, we exercise our authority to reconsider this case on our own initiative.

This cause is remanded 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. The trial court may order affidavits or hold a live hearing if warranted. The trial court may re-adopt its prior findings of fact, conclusions of law, and recommendation, or it may make new or additional findings and conclusions and a new recommendation to this Court. The trial court may also appoint counsel for applicant pursuant to Article 11.071 if it believes such appointment necessary.

This cause will be held in abeyance pending the trial court's compliance with this order. The trial court shall resolve the issues presented within 60 days of the date of this order. A supplemental transcript containing the trial court's resolution or any additional findings of fact and conclusions of law shall be returned to this Court within 90 days of the date of this order.¹

IT IS SO ORDERED THIS THE 4TH DAY OF APRIL, 2012.

Do Not Publish

¹ Any extensions of either time period should be obtained from this Court.