



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

NOS. WR-59,925-01 and WR-59,925-02

EX PARTE ROBERT WAYNE HARRIS

**ON APPLICATION FOR POST-CONVICTION WRIT OF HABEAS CORPUS
AND MOTION FOR STAY OF EXECUTION
FROM CAUSE NO. F00-01010-TS IN THE 282ND DISTRICT COURT
DALLAS COUNTY**

Per Curiam.

ORDER

This is a subsequent application for writ of habeas corpus filed pursuant to the provisions of Texas Code of Criminal Procedure Article 11.071, § 5, and a motion for a stay of execution.

In September 2000, a jury found applicant 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 applicant's punishment at death. This Court affirmed applicant's conviction and sentence on direct appeal. *Harris v. State*, No.

AP-74,025 (Tex. Crim. App. Feb. 12, 2003)(not designated for publication). Applicant filed his initial post-conviction application for writ of habeas corpus in the convicting court on July 1, 2002. This Court denied applicant relief. *Ex parte Harris*, No. WR-59,925-01 (Tex. Crim. App. Sept. 15, 2004)(not designated for publication). This, applicant's first subsequent application, was filed in the trial court on August 27, 2012.

In his application, applicant raises a claim that the State violated his right to equal protection in its use of peremptory challenges as set out in *Batson v. Kentucky*, 486 U.S. 79 (1986). He argues that this Court should address this claim in his subsequent application because the decision of *Miller-El v. Dretke*, 545 U.S. 231 (2005), provides a new legal basis. Applicant is mistaken, and his allegation fails to meet the dictates of Article 11.071, § 5. Accordingly, we dismiss the application as an abuse of the writ without considering the merits of the claim.

Alternatively, applicant requests that this Court re-open his initial writ application and reconsider on our own motion the *Batson* claim raised there in light of *Miller-El*. Applicant has not presented a compelling reason to re-open his initial writ application, and we decline to do so. Applicant's motion to stay his execution is denied.

IT IS SO ORDERED THIS THE 5th DAY OF SEPTEMBER, 2012.

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