



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-62,425-02 and WR-62,425-01

EX PARTE KEITH THURMOND

ON APPLICATION FOR POST-CONVICTION WRIT OF HABEAS CORPUS
AND MOTION FOR STAY OF EXECUTION
FROM CAUSE NO. 01-12-07721-CR IN THE 410TH DISTRICT COURT
MONTGOMERY COUNTY

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

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 stay of execution.

In November 2002, 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. *Thurmond v. State*, No. AP-74,493 (Tex. Crim. App. Nov. 17, 2004)(not designated for publication). Applicant filed his initial post-conviction application for writ of habeas corpus in the convicting court on October 29, 2004. This Court denied applicant relief. *Ex parte Thurmond*, No. WR-62,425-01 (Tex. Crim. App. Aug. 31, 2005)(not designated for publication). This, applicant's first subsequent application, was filed in the trial court on February 28, 2012.

In his application, applicant raises a claim that his trial counsel was ineffective for failing to investigate and present mitigating evidence at trial. He argues that this Court should address this claim in his subsequent application because his initial state habeas counsel was ineffective in failing to properly raise the claim in his initial application. Applicant's 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, and we deny his motion to stay his execution. Likewise, we decline applicant's invitation to reconsider applicant's initial habeas application.

IT IS SO ORDERED THIS THE 29TH DAY OF FEBRUARY, 2012.

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