



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

NO. WR-64,302-02

EX PARTE OBIE D. WEATHERS, III

**ON APPLICATION FOR WRIT OF HABEAS CORPUS
CAUSE NO. 2000-CR-2916 IN THE 399TH JUDICIAL DISTRICT COURT
BEXAR COUNTY**

Per curiam. Hervey, J., not participating.

ORDER

This is a subsequent application for writ of habeas corpus filed pursuant to the provisions of Article 11.071, § 5, TEX. CODE CRIM. PROC.

In May 2001, Applicant was convicted of the offense of capital murder. The jury answered the special issues submitted pursuant to Article 37.071, TEX. CODE CRIM. PROC., and the trial court, accordingly, set punishment at death. This Court affirmed Applicant's

conviction and sentence on direct appeal. *Weathers v. State*, No. AP-74,144 (Tex. Crim. App. October 22, 2003)(not designated for publication). This Court denied relief on Applicant's initial post-conviction application for writ of habeas corpus. *Ex parte Weathers*, No. WR-64,302-01 (Tex. Crim. App. September 13, 2006)(not designated for publication). Applicant's instant post-conviction application for writ of habeas corpus was received in this Court on October 7, 2011.

The record reflects that Applicant is currently challenging his conviction in Cause No. SA-06-CA-868-XR, styled *Obie D. Weathers, III v. Nathaniel Quarterman*, in the United States District Court for the Western District of Texas, San Antonio Division. The record also reflects that the federal district court has entered an order staying its proceedings for Applicant to return to state court to consider his current unexhausted claim. Therefore, this Court may exercise jurisdiction to consider this subsequent state application. *See Ex parte Soffar*, 143 S.W.3d 804 (Tex. Crim. App. 2004).

Applicant alleges that his execution would violate the Eighth Amendment's prohibition against the execution of the mentally retarded. *See Atkins v. Virginia*, 536 U.S. 304 (2002). We have reviewed the application and find that this allegation satisfies the requirements of Article 11.071, § 5(a)(3), TEX. CODE CRIM. PROC. Accordingly, we find that the requirements for consideration of a subsequent application have been met and the cause is remanded to the trial court for consideration of the allegations.

This application for habeas corpus relief will be held in abeyance pending the trial

court's compliance with this order. The trial court shall resolve the issues presented within 90 days of the date of this order.¹ A supplemental transcript containing any additional findings of fact and conclusions of law shall be returned to this Court within 120 days of the date of this order.²

IT IS SO ORDERED THIS THE 18TH DAY OF APRIL, 2012.

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¹ In the event any continuances are granted, copies of the order granting the continuance should be provided to this Court.

² Any extensions of this time period should be obtained from this Court.