



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

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**NO. WR-69,470-02**

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**EX PARTE RODRIGO HERNANDEZ**

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**ON APPLICATION FOR POST-CONVICTION WRIT OF HABEAS CORPUS  
FROM CAUSE NO. 2002-CR-8100-W2  
IN THE 144<sup>TH</sup> JUDICIAL DISTRICT COURT  
BEXAR COUNTY**

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***Per Curiam.* PRICE, J., filed a dissenting statement in which JOHNSON, J.,  
joined. WOMACK, J., dissents.**

**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.

In March 2004, 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. *Hernandez v. State*, No.

AP-74,931 (Tex. Crim. App. Feb. 15, 2006)(not designated for publication). Applicant filed his initial post-conviction application for writ of habeas corpus in the convicting court on January 25, 2006. This Court denied applicant relief. *Ex parte Hernandez*, No. WR-69,470-01 (Tex. Crim. App. Apr. 30, 2008)(not designated for publication). Applicant's subsequent application was filed in the trial court on January 17, 2012.

Applicant presents two allegations in his application. In his first claim, applicant asserts that his execution would violate the United States Supreme Court's opinion in *Atkins v. Virginia*, 536 U.S. 304 (2002), holding that the Eighth Amendment prohibits the execution of the mentally retarded. In his second claim, applicant asserts that trial counsel rendered ineffective assistance of counsel with respect to the punishment phase of trial.

We have reviewed the application and find that applicant has failed to satisfy his threshold burden on his claim of mental retardation. *See Ex parte Blue*, 230 S.W.3d 151, 153 (Tex. Crim. App. 2007). Applicant's other claim likewise 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 claims.

IT IS SO ORDERED THIS THE 23<sup>rd</sup> DAY OF JANUARY, 2012.

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