



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

NO. WR-78,123-01

EX PARTE RODOLFO ALVAREZ MEDRANO

**ON APPLICATION FOR WRIT OF HABEAS CORPUS IN CAUSE
NO. CR-0942-03-F IN THE 332ND JUDICIAL DISTRICT COURT
HIDALGO COUNTY**

***Per Curiam.* KELLER, P.J., filed a dissenting opinion in which KEASLER and HERVEY, JJ., joined. MEYERS, J., dissented.**

ORDER

Two motions are before this Court in relation to the filing of an application for post-conviction writ of habeas corpus pursuant to the provisions of Texas Code of Criminal Procedure article 11.071.

In August 2005, a jury convicted applicant 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 punishment at death. This Court

affirmed applicant's conviction and sentence on direct appeal. *Medrano v. State*, No. AP-75,320 (Tex. Crim. App. Nov. 26, 2008)(not designated for publication).

Pursuant to Article 11.071 §§ 4(a) and 4(b), the writ application should have been filed in the trial court "not later than the 45th day after the date the state's original brief [was] filed on direct appeal" with the possibility of receiving one 90-day extension. The State's brief on direct appeal was filed in this Court on July 12, 2007. This made the due date for filing the application no later than November 26, 2007, assuming a motion for extension was both timely filed and timely granted.

However, a review of the record showed that although a motion for extension was timely filed, it was not timely granted. Thus, when originally appointed counsel filed an application in November 2007, it was not timely filed. Furthermore, other events occurred in the case which created a conflict between that counsel and applicant. To remedy the conflict, the convicting court removed the original counsel from the case and substituted in new counsel. After reviewing the record in the case, this Court determined that it should strike the pleading filed, adopt the trial court's appointment of new counsel, and set a new filing date. *Ex parte Medrano*, No. WR-78,123-01 (Tex. Crim. App. Nov. 7, 2012)(not designated for publication). The new due date was set at 270 days from the date of the order.¹ Counsel has now filed a motion for an extension in the case and a

¹ The new due date is Sunday, August 4, 2013, making the application timely if filed by Monday, August 5, 2013.

motion to declare the application “timely filed as of November 26, 2009 to preserve [the] federal statute of limitations[.]”

Although counsel’s explanation of good cause for needing additional time is weak, we grant him the additional time he seeks. To be timely, applicant’s habeas application must be filed in the trial court on or before December 2, 2013, and no further extensions will be entertained. With regard to counsel’s second motion, we note that, according to the trial court’s order dismissing initial counsel, the deficient pleading that was subsequently struck by this Court was filed on November 20, 2007. Had that document been proper, applicant’s federal statute of limitations would have been tolled. Because applicant had no fault in his first counsel’s failure to timely file a sufficient pleading, we grant current counsel’s motion to declare an application filed on or before the December 2 deadline to be timely filed as of November 20, 2007.

IT IS SO ORDERED THIS THE 31ST DAY OF JULY, 2013.

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