



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

WR-8,315-07

EX PARTE JACK HARRY SMITH

**ON SUBSEQUENT APPLICATION FOR WRIT OF HABEAS CORPUS
CAUSE NO. 274702-C IN THE 230TH DISTRICT COURT
HARRIS 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.

Applicant was convicted of the offense of capital murder in July 1978. The jury answered the special issues submitted under Article 37.071 of the Texas Code of Criminal Procedure, and the trial court, accordingly, set punishment at death. This Court affirmed Applicant's conviction and sentence on direct appeal. *Smith v. State*, 676 S.W.2d 379 (Tex.

Crim. App. 1984), *cert. denied*, 471 U.S. 1061 (1985). This Court denied Applicant's initial post-conviction application for writ of habeas corpus. *Ex parte Smith*, No. WR-8,315-05 (Tex. Crim App. Oct. 30, 1985)(denied without written order). This Court then denied in part and dismissed in part Applicant's first subsequent application. *Ex parte Smith*, No. WR-8,315-06 (Tex. Crim. App. Sept. 10, 2003)(not designated for publication).

Applicant's instant post-conviction application for writ of habeas corpus was received in this Court on January 16, 2009. He presented five claims, two of which satisfied the requirements of Texas Code of Criminal Procedure Article 11.071, § 5:

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| Claim I | Mr. Smith's death sentence and execution violates the Eighth and Fourteenth Amendments because he is a person with mental retardation. |
| Claim IV | Mr. Smith was denied his Eighth and Fourteenth Amendment rights to reliable sentencing because the jury at this capital sentencing proceeding lacked an adequate vehicle through which to express its reasoned moral response to the circumstances of the offense, Mr. Smith's character and background, and Mr. Smith's moral culpability. |

We remanded these claims to the trial court for consideration. *Ex parte Smith*, No. WR-8,315-07 (Tex. Crim. App. Mar. 11, 2009)(not designated for publication).

On remand, the trial court held an evidentiary hearing on the mental retardation issue only. The trial court adopted the State's proposed findings of fact and conclusions of law recommending that the relief sought on both claims be denied.

This Court has reviewed the record with respect to the allegations made by applicant.
Based upon the trial court's findings and conclusions and our own review, we deny relief.

IT IS SO ORDERED THIS THE 26TH DAY OF JUNE, 2013.

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