



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

NO. WR-56,841-05

EX PARTE DANIEL CLATE ACKER

**ON APPLICATION FOR WRIT OF HABEAS CORPUS
CAUSE NO. 0016026A14 IN THE 8TH DISTRICT COURT
HOPKINS COUNTY**

Per curiam.

ORDER

This is a post conviction application for writ of habeas corpus filed pursuant to the provisions of Texas Code of Criminal Procedure article 11.071.

Applicant was convicted of capital murder in March 2001. The jury answered the special issues submitted pursuant to Texas Code of Criminal Procedure article 37.071, and the trial court sentenced applicant to death. This Court affirmed applicant's conviction and sentence on direct appeal. *Acker v. State*, AP-74,109 (Tex. Crim. App. Nov. 26, 2003) (not selected for publication). In July 2003, Applicant filed his initial post-conviction application for writ of habeas corpus pursuant to Article 11.071. He filed a *pro se* subsequent application in February 2008. We denied relief on his initial application and dismissed his

first subsequent application in a single order. *Ex parte Acker*, No. WR-56,841-01, -03 (Tex. Crim. App. Nov. 15, 2006) (not selected for publication).¹

Applicant filed a habeas petition in the United States District Court for the Eastern District of Texas. *Acker v. Thaler*, No. 4:06-cv-469, Document 17 (U.S. Dist. – Sherman Nov. 14, 2007). The federal district court granted his motion to stay the federal habeas proceedings in order to present unexhausted claims in state court. *Id.*, Documents 21 and 25. Applicant then filed his second subsequent application on February 7, 2008. We dismissed it as an abuse of the writ. *Ex parte Acker*, WR-56,841-04 (Tex. Crim. App. Sept. 10, 2008) (not selected for publication).

The federal habeas proceedings resumed in November 2008. *Acker v. Thaler*, No. 4:06-cv-469, Document 30. The State's motion for extension was granted on July 18, 2012. As of now, no briefs have been filed. On March 18, 2014, applicant filed, *pro se*, his third subsequent state habeas application in the trial court. In compliance with Article 11.071, the trial court forwarded this application to this Court. *See* Art. 11.071, Sec. § 5(b)(1).

We decline to consider this application because federal habeas proceedings challenging the same conviction are pending. *See Ex parte Soffar*, 143 S.W.3d 804, 805 (Tex. Crim. App. 2004). Accordingly, we dismiss the instant application without prejudice.

IT IS SO ORDERED THIS THE 14TH DAY OF MAY, 2014.

Do Not Publish

¹ The *pro se* mandamus application numbered as WR-56,841-02 was denied. *Ex parte Acker*, WR-56,841-02 (Tex. Crim. App. June 28, 2006) (not selected for publication).