



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

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**WR-64,302-02**

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**EX PARTE OBIE D. WEATHERS, III**

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

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***Per curiam.* PRICE, J., filed a concurring statement in which JOHNSON, J., joined. ALCALA, J., filed a concurring statement in which COCHRAN, J., joined. HERVEY, J., not participating.**

**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 May 2001, Applicant was convicted 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. *Weathers v. State*, No. AP-74,144 (Tex. Crim. App. Oct. 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. Sept. 13, 2006)(not designated for publication).

Applicant claims 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). This claim, which satisfied the requirements of Article 11.071, § 5, was remanded to the trial court for consideration of that issue. The trial court held a hearing and made findings of fact and conclusions of law recommending that this application be denied because Applicant has failed to show that he is mentally retarded.

This Court has reviewed the record with respect to Applicant's allegation. We adopt the trial judge's findings and conclusions, except for the sentence on page 27 which reads, "But even her own testing showed Applicant to be within the error range of not being mentally retarded."<sup>1</sup> Based upon the trial court's findings and conclusions and our own review, we deny relief.

IT IS SO ORDERED THIS THE 30<sup>TH</sup> DAY OF APRIL, 2014.

Do Not Publish

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<sup>1</sup> This sentence, which refers to Joann Murphey's IQ testing of Applicant, is located on page 562 of the Clerk's Record.