



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-46,177-03

EX PARTE JOHN EARL NOLLEY, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. C-213-010761-0665622-B IN THE 213TH DISTRICT COURT
FROM TARRANT COUNTY**

Per curiam.

OPINION

Pursuant to the provisions of Article 11.07 of the Texas Code of Criminal Procedure, the clerk of the trial court transmitted to this Court this application for a writ of habeas corpus. *Ex parte Young*, 418 S.W.2d 824, 826 (Tex. Crim. App. 1967). Applicant was convicted of murder and sentenced to life imprisonment. The Second Court of Appeals affirmed his conviction. *Nolley v. State*, No. 02-98-00253-CR (Tex. App.—Fort Worth Sep. 23, 1999). Applicant later filed a *pro se* habeas application that was denied by this Court in 2001. *Ex parte Nolley*, No. WR-46,177-02 (Tex. Crim. App. Jan. 10, 2001).

Applicant, through habeas counsel, files this subsequent habeas application. He raises claims

of actual innocence pursuant to *Ex parte Elizondo*, 947 S.W.2d 202 (Tex. Crim. App. 1996), newly available DNA and scientific evidence pursuant to Article 11.073 of the Code of Criminal Procedure, State suppression of favorable and material evidence under *Brady v. Maryland*, 373 U.S. 83 (1963), and false testimony under *Ex parte Weinstein*, 421 S.W.3d 656 (Tex. Crim. App. 2014).

The trial court, with the State's agreement, recommends that relief be granted on the *Brady* and false testimony claims, which claims are all based on newly available evidence, and Applicant has agreed, also with the State's agreement, to waive the remaining claims of actual innocence and newly discovered DNA and scientific evidence. According to the agreed findings entered by the trial court:

The undisclosed documents at issue, when considered cumulatively, constitute material evidence that clearly undermines confidence in the outcome of the trial. The State concurs with Applicant's contention that there is at least a reasonable likelihood that the false testimony of [several] witnesses affected his conviction.

The trial court's findings are supported by the habeas record and applicable law. Relief is therefore granted on Applicant's *Brady* and false testimony claims. Applicant's remaining claims, including his actual innocence claim, are accordingly waived.

The judgment in Cause No. 0665622D in the 213th District Court of Tarrant County is set aside, and Applicant, who appears to be currently released from custody on a habeas bond, is remanded to answer the charges as set out in the indictment. The trial court shall issue any necessary order within 10 days after the mandate of this Court issues.

Copies of this opinion shall be sent to the Texas Department of Criminal Justice-Correctional Institutions Division and Pardons and Paroles Division.

Delivered: May 9, 2018
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