



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

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**NO. AP-77,026**

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**ROBERT GENE LEOS GARZA, Appellant**

**v.**

**THE STATE OF TEXAS**

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**ON DIRECT APPEAL FROM THE DENIAL OF DNA TESTING  
IN CAUSE NO. CR-0945-03-I IN THE 398<sup>TH</sup> DISTRICT COURT  
HIDALGO COUNTY**

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*Per Curiam.*

**O P I N I O N**

In December 2003, a jury found appellant guilty 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 appellant's punishment at death. This Court affirmed appellant's conviction and sentence on direct appeal. *Garza v. State*, 213 S.W.3d 338 (Tex. Crim. App. 2007). Applicant filed his initial post-conviction application for a writ of habeas corpus in the convicting court on January 11, 2006. This Court denied applicant relief. *Ex parte Garza*, No. WR-70,257-01 (Tex. Crim. App. Sept. 10, 2008)(not

designated for publication). Subsequently, the trial court set an execution date of September 19, 2013.

On September 6, 2013, just thirteen days before his scheduled execution, appellant filed in the trial court a motion for post-conviction DNA testing pursuant to Chapter 64 of the Texas Code of Criminal Procedure. The trial court denied the motion for testing, finding that appellant had failed to show by a preponderance of the evidence (1) that he would not have been convicted if exculpatory results had been obtained; and (2) that the motion was not made to unreasonably delay the execution of sentence. Appellant filed a notice of appeal regarding the court's ruling. This Court now accelerates this appeal and reviews appellant's claims.

After reviewing the record in the case and appellant's pleadings, we find that the trial court's conclusions are supported by the record. The trial court's ruling denying post-conviction DNA testing is affirmed. No motions for rehearing will be entertained in this case, and the Clerk of the Court is ordered to issue mandate immediately.

Do Not Publish

Delivered: September 19, 2013