



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

NO. WR-50,360-03

EX PARTE KIMBERLY LAGAYLE MCCARTHY

**ON APPLICATION FOR POST-CONVICTION WRIT OF HABEAS CORPUS
FROM CAUSE NO. F97-34795-V IN THE 292ND DISTRICT COURT
DALLAS COUNTY**

Per Curiam. KEASLER, J., not participating.

ORDER

This is a subsequent application for a writ of habeas corpus filed pursuant to the provisions of Texas Code of Criminal Procedure Article 11.071, § 5.

In November 2002, a jury found applicant 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 applicant's punishment at death. This Court affirmed applicant's conviction and sentence on direct appeal. *McCarthy v. State*, No. AP-74,590 (Tex. Crim. App. Sept. 22, 2004)(not designated for publication).

Applicant filed her initial post-conviction application for writ of habeas corpus in the convicting court on August 24, 2004. This Court denied applicant relief. *Ex parte McCarthy*, No. WR-50,360-02 (Tex. Crim. App. Sept. 12, 2007)(not designated for publication). Applicant filed this her first subsequent writ application in the trial court on March 26, 2013.

In her application, applicant asserts that her right to equal protection was violated when the State used peremptory strikes to exclude qualified non-white veniremembers from the jury. After reviewing the application, this Court has determined that applicant has failed to meet the dictates of Article 11.071, § 5. Accordingly, we dismiss the application as an abuse of the writ without considering the merits of the claim.

IT IS SO ORDERED THIS THE 27th DAY OF MARCH, 2013.

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