



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

NO. WR-50,360-04

EX PARTE KIMBERLY LAGAYLE MCCARTHY

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

***Per Curiam.* PRICE, J., filed a concurring statement in which MEYERS, J., joined. COCHRAN, J., filed a concurring statement. ALCALA, J., filed a dissenting statement in which JOHNSON, J., joined. KEASLER, J., did not participate.**

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, and a motion to stay applicant's execution.

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 her first subsequent writ application in the trial court on March 26, 2013, and this Court dismissed it the next day. *Ex parte McCarthy*, No. WR-50,360-03 (Tex. Crim. App. Mar. 27, 2013)(not designated for publication). Applicant filed this her second subsequent writ application in the trial court on June 19, 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 venire members from the jury. She also asserts that her trial counsel was ineffective for failing to preserve the issue, and her appellate counsel and initial habeas counsel were ineffective for failing to raise the issue. 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, and we deny applicant's motion to stay her execution.

IT IS SO ORDERED THIS THE 24th DAY OF JUNE, 2013.

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