



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

NO. WR-70,152-02

EX PARTE GERONIMO GUTIERREZ

**ON APPLICATION FOR WRIT OF HABEAS CORPUS
CAUSE NO. 2001-CR-1577 IN THE 227TH DISTRICT COURT
BEXAR COUNTY**

*Per Curiam. ALCALA, J., filed a concurring statement which COCHRAN, J.,
joined.*

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, § 5.¹

In 2002, a jury convicted applicant of the offense of capital murder. The jury answered the special issues submitted under Article 37.071, and the trial court,

¹ Unless otherwise indicated, all references to Articles are to the Texas Code of Criminal Procedure.

accordingly, set punishment at death. This Court affirmed applicant's conviction and sentence on direct appeal. *Gutierrez v. State*, No. AP-74,341 (Tex. Crim. App. April 21, 2004) (not designated for publication). Applicant filed his initial post-conviction application for writ of habeas corpus in the convicting court in 2004, and this Court denied relief in 2008. *Ex parte Gutierrez*, No. WR-70,152-01 (Tex. Crim. App. Oct. 1, 2008) (not designated for publication). Applicant then filed an application for a writ of habeas corpus in federal district court, and the federal court entered an order staying the proceedings so that applicant could return to state court to present unexhausted claims. *Gutierrez v. Thaler*, 5:09-CV-543, Document 45 (W.D. Tex., San Antonio Div. Aug. 31, 2010) (not designated for publication). Applicant then filed this subsequent application for writ of habeas corpus in the convicting court on or about February 4, 2011. In compliance with Art. 11.071, § 5(b)(1), the convicting court forwarded this application to this Court.

We have reviewed this subsequent application and find that the allegations fail to satisfy the requirements of Article 11.071, § 5(a). Accordingly, we dismiss the application as an abuse of the writ without considering the merits of the claims. Art. 11.071, § 5(c).

IT IS SO ORDERED THIS THE 23RD DAY OF OCTOBER, 2013.

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