



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

NO. WR-76,632-01

EX PARTE TRAVIS JAMES MULLIS

**ON MOTION TO APPOINT COUNSEL AND
ESTABLISH NEW HABEAS CORPUS DUE DATE
CAUSE NO. 08CR0333 IN THE 122ND DISTRICT COURT
GALVESTON COUNTY**

Per Curiam.

ORDER

We have before us a motion to appoint counsel and establish a new filing date for a Texas Code of Criminal Procedure Article 11.071 writ application.¹

In March 2011, a jury convicted applicant of capital murder and answered the statutory punishment questions in such a way that the trial court sentenced applicant to

¹ Unless otherwise indicated all references to Articles refer to the Code of Criminal Procedure.

death.² On March 23, 2011, the trial court determined that applicant was indigent and appointed the Office of Capital Writs to represent him for the purpose of filing an Article 11.071 application for writ of habeas corpus. Shortly thereafter, applicant waived the appointment of habeas counsel, and he expressed his desire to waive habeas review altogether. At defense counsel's request, the trial court appointed an expert to evaluate applicant, and the expert found applicant to be competent to waive his habeas review. The trial court held a hearing and, based upon the expert's determination, granted applicant's request to dismiss his habeas counsel. But despite the desire he expressed early in the process, applicant could have changed his mind and filed an application at any time on or before July 2, 2012.

That date passed, and no writ application was filed in the trial court. Furthermore, applicant continued to maintain his desire to waive habeas review until at least mid-August. On August 22, the trial judge received a letter from applicant in which applicant requested that his appeals be reinstated because "new evidence has surfaced." On August 28, this Court received a similar letter. Despite these vaguely worded letters, and based in part on applicant's consistent and persistent attempts to waive habeas review, this Court issued an order holding that applicant's failure to timely file an application constituted a waiver of all grounds for relief that were available to him before the last date on which his application

² Because applicant failed to file a brief on direct appeal, this Court automatically reviewed the case for constitutional error. Finding none, the Court affirmed the case on April 25, 2012, and mandate issued on May 21, 2012.

could have been timely filed. Art. 11.071, § 4(e); *Ex parte Mullis*, No. WR76,632-01 (Tex. Crim. App. Sept. 12, 2012)(not designated for publication).

On September 17, this Court received another letter from applicant in which he requested that this Court “revoke and withdraw” his request to renew his appeals. In his letter he notified this Court that no attorney was authorized to file anything in his case, and he explicitly requested that this Court disregard any filings not made by him *pro se*. On November 20, this Court received the motion that is the subject of this order. In the motion, *pro bono* counsel argues that new evidence shows that applicant was not competent to waive habeas review in October 2011, but he is competent to pursue it now. Therefore, counsel concludes, counsel should be appointed and a new due date should be established.

As support for his motion, counsel provides the Court with a report from psychiatrist Michael Fuller who, after evaluating applicant on November 1, 2012, states that applicant intentionally deceived the expert who evaluated him in October 2011. Fuller concluded that, at the time of that October 2011 evaluation, applicant was experiencing overwhelming fears and depression that rendered him incompetent to waive his appeal rights. However, at the November 2012 interview, Fuller determined that applicant has now adapted relatively well to his environment, and the conditions that existed previously are not currently affecting his decisional abilities. But neither counsel’s motion nor Fuller’s report show that applicant was incompetent on August 22, 2012, when he tried to reinstate his appeals or on September 13, 2012, when he again re-urged his desire to waive review of his conviction.

In light of applicant's most recent letter, his consistent and persistent efforts to forego habeas review, and our review of the record, we hold that counsel has failed to establish good cause for failing to file a habeas application on or before the statutorily applicable due date. Therefore, counsel's motion is denied.

IT IS SO ORDERED THIS THE 12th DAY OF DECEMBER, 2012.

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