



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

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**NO. WR-75,828-02**

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**EX PARTE PAUL DAVID STOREY, Applicant**

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**ON APPLICATION FOR POST-CONVICTION WRIT OF HABEAS CORPUS  
IN CAUSE NO. C-3-011020-1042204-B IN CRIMINAL DISTRICT COURT NO. 3  
DALLAS COUNTY**

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*Per curiam.* **KEEL, J., dissents.**

## **ORDER**

We have before us a post-conviction 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 September 2008, a jury convicted applicant of the offense of capital murder for murdering a person in the course of robbing him. TEX. PENAL CODE § 19.03(a)(2). The jury answered the special issues submitted pursuant to Texas Code of Criminal Procedure

Article 37.071, and the trial court, accordingly, set punishment at death. This Court affirmed applicant's conviction and sentence on direct appeal. *Storey v. State*, No. AP-76,018 (Tex. Crim. App. Oct. 6, 2010)(not designated for publication). On May 26, 2010, applicant filed in the convicting court his initial application for a writ of habeas corpus in which he raised eight claims. This Court denied applicant relief. *Ex parte Storey*, No. WR-75,828-01 (Tex. Crim. App. June 15, 2011)(not designated for publication).

On March 31, 2017, applicant filed in the convicting court his first subsequent habeas application. In the subsequent application, applicant asserts that (1) newly-discovered evidence "compels relief"; (2) the State denied him his right to due process because it argued "evidence" it knew to be false; (3) the State introduced false evidence which unconstitutionally deprived him of a fair punishment trial; (4) the State denied him his right to due process by suppressing mitigating evidence; (5) by arguing false aggravating evidence and suppressing mitigating evidence, the State rendered the death sentence in this case unreliable under the Eighth and Fourteenth Amendments; and (6) the State violated the Fourteenth Amendment by seeking death in this case.

After reviewing applicant's writ application, we find that claims two through five arguably satisfy the requirements of Article 11.071 § 5. However, the record is not sufficient to determine with assurance whether applicant could have previously discovered the evidence complained of in the claims. Accordingly, we remand these claims to the trial court for it to develop the record. The trial court is ordered to make

findings of fact and conclusions of law regarding whether the factual basis of these claims was ascertainable through the exercise of reasonable diligence on or before the date the initial application was filed. If the court determines that the factual basis of the claims was not ascertainable through the exercise of reasonable diligence on or before the date the initial application was filed, then it will proceed to review the merits of the claims.

Once the court has completed its review, it shall order the case returned to this Court. Applicant's execution is stayed pending further order of this Court.

IT IS SO ORDERED THIS THE 7<sup>th</sup> DAY OF APRIL, 2017.

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