



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

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**NO. WR-48,131-02**

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**EX PARTE CHARLES DOUGLAS RABY**

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**ON APPLICATION FOR WRIT OF HABEAS CORPUS  
CAUSE NO. 9407130 IN THE 248<sup>TH</sup> JUDICIAL DISTRICT COURT  
HARRIS COUNTY**

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*Per curiam. ALCALA, J., dissents.*

**ORDER**

This is a subsequent post-conviction application for writ of habeas corpus filed pursuant to the provisions of Texas Code of Criminal Procedure Article 11.071, § 5.<sup>1</sup>

In June 1994, 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, accordingly,

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

set punishment at death. Art. 37.071, § 2(g). This Court affirmed applicant's conviction and sentence on direct appeal. *Raby v. State*, 970 S.W.2d 1 (Tex. Crim. App. 1998), *cert denied*.

Applicant filed his initial post-conviction application for writ of habeas corpus in the convicting court in 2000. This Court denied relief. *Ex parte Raby*, No. WR-48,131-01 (Tex. Crim. App. January 31, 2001) (not designated for publication). Applicant then petitioned for a federal writ of habeas corpus, which was ultimately denied. *Raby v. Cockrell*, No. 4:02-cv-00349 (S.D. Tex. November 27, 2002); *certificate of appealability denied*, No. 03-20129, 78 Fed. Appx. 324 (5th Cir. October 15, 2003) (not designated for publication), *cert denied*.

Applicant then filed this subsequent habeas application in the convicting court on June 16, 2016. In this application, Applicant asserts that he is entitled to relief under Texas Code of Criminal Procedure Article 11.073 because, had the results of DNA testing conducted pursuant to a Chapter 64 motion been available at the time of trial, it is likely that the jury would not have convicted him. He further asserts that he is entitled to relief under Article 11.071 because, had exonerating blood-typing evidence been available at the time of trial, it is likely that the jury would not have convicted him. Applicant additionally asserts that the combined effect of the DNA testing results and the previously unavailable blood typing evidence entitles him to relief. Further, applicant asserts that he was convicted on the basis of a false and involuntary confession and that he received ineffective assistance of trial counsel at the guilt and punishment phases.

After reviewing applicant's application, we find that he has failed to satisfy the

Raby - 3

requirements of Article 11.071 § 5 and Article 11.073(c). Accordingly, the application is dismissed as an abuse of the writ without reviewing the merits of the claims. Art. 11.071 § 5(c).

IT IS SO ORDERED THIS THE 17<sup>TH</sup> DAY OF MAY, 2017.

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