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DATE: 3/3/22 FROM: Cindy Hodges PAGES: 6

INMATE NAME: **Michael Dean Gonzales**

NEW EXECUTION LIST ORDER SETTING EXECUTION

STAY OF EXECUTION OTHER:

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IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-40,541-07

EX PARTE MICHAEL DEAN GONZALES, Applicant

**ON APPLICATION FOR POST-CONVICTION WRIT OF HABEAS CORPUS
FROM CAUSE NO. D-23,730 IN THE 358TH JUDICIAL DISTRICT COURT
ECTOR COUNTY**

Per curiam. KEEL, J., filed a concurring and dissenting opinion. KELLER, P.J., and YEARY and SLAUGHTER, JJ., dissent.

ORDER

We have before us 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.¹

In December 1995, a jury convicted Applicant of the April 1994 capital murder of Merced Aguirre and her husband Manuel Aguirre. *See* TEX. PENAL CODE § 19.03(a).

¹ All references to "Articles" in this order refer to the Texas Code of Criminal Procedure unless otherwise specified.

Based on the jury's answers to the special issues submitted pursuant to Article 37.071, the trial court sentenced Applicant to death. This Court affirmed Applicant's conviction and sentence on direct appeal. *Gonzales v. State*, No. AP-72,317 (Tex. Crim. App. June 3, 1998) (not designated for publication). And we denied relief on Applicant's initial post-conviction writ of habeas corpus application. *Ex parte Gonzales*, No. WR-40,541-01 (Tex. Crim. App. Mar. 10, 1999) (not designated for publication).

Applicant's federal petition for habeas corpus relief was denied as to his conviction but granted as to punishment, and the case was remanded for a new punishment hearing. *Gonzales v. Cockrell*, No. MO-99-CA-073 (W.D. Tex. Dec. 19, 2002). The United States Court of Appeals for the Fifth Circuit affirmed the federal district court's judgment. *Gonzales v. Quarterman*, 458 F.3d 384 (5th Cir. 2006).

The trial court held a new punishment hearing in May 2009. Based on the jury's answers to the special issues, the trial court sentenced Applicant to death. Applicant thereafter stated that he wanted no appeals filed on his behalf and no attorneys appointed. But because direct appeal cannot be waived, the trial court appointed counsel to represent Applicant on direct appeal. For the purpose of Article 11.071, the trial court found that Applicant was proceeding *pro se* on habeas.

This Court affirmed the sentence on direct appeal. *Gonzales v. State*, 353 S.W.3d 826 (Tex. Crim. App. 2011). When Applicant failed to timely file a post-conviction writ of habeas corpus application, this Court issued an order stating in pertinent part:

Because of applicant's expressed desire to waive habeas, the lack of any vacillation of that waiver appearing in the record, and applicant's failure to timely file an application, we hold that applicant has waived his right to the review of an initial Article 11.071 habeas application. Any writ application filed hereafter by applicant or on applicant's behalf will be labeled a subsequent application and reviewed under Article 11.071 § 5.

Ex parte Gonzales, No. WR-40,541-03 (Tex. Crim. App. Nov. 10, 2010) (not designated for publication). On September 9, 2014, Applicant filed a habeas corpus application in the trial court. We found that Applicant failed to satisfy the Article 11.071 § 5(a) requirements, and we dismissed the application as an abuse of the writ. *Ex parte Gonzales*, No. WR-40,541-04 (Tex. Crim. App. June 3, 2015) (not designated for publication).

Applicant filed the instant habeas application in the trial court on February 28, 2022. He raises four claims in the application. Specifically, Applicant asserts that: (1) he is intellectually disabled and cannot constitutionally be executed; (2) the State suppressed material exculpatory and impeaching information in violation of *Brady v. Maryland*; (3) the State knowingly elicited multiple instances of false testimony in violation of Applicant's due process rights; and (4) he is actually innocent. After reviewing the record, we have determined that Applicant's claims 1 and 2 (regarding intellectual disability and disclosure of *Brady* evidence) meet the dictates of Article 11.071 § 5(a). We therefore remand those claims to the trial court for a merits' review. The remaining claims do not meet the requirements of Article 11.071 § 5(a) and should not be reviewed. Applicant's execution is stayed pending resolution of the remanded

claims.

IT IS SO ORDERED THIS THE 3rd DAY OF MARCH, 2022.

Do Not Publish

**Texas Attorney General's Office
Criminal Appeals Division
Interoffice Memorandum**

To: The Criminal Appeals Division
From: Cindy Hodges
Date: March 3, 2022
Subject: Execution List

INMATE	DATE	COUNTY	ASST. AG	FEDERAL DISTRICT COURT
Carl Wayne Buntion	04/21/22	HARRIS	HANNA	SD/Houston
Melissa E. Lucio	04/27/22	CAMERON	WREN	SD/Brownsville
Ramiro Felix Gonzales	07/13/22	MEDINA	OTTOWAY	WD/San Antonio
Kosoul Chanthakoummane	08/17/22	COLLIN	PATTON	ED/Sherman