



## IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NOS. WR-53,613-10 and WR-53,613-11

EX PARTE LARRY RAY SWEARINGEN

ON APPLICATION FOR WRITS OF HABEAS CORPUS IN CAUSE  
NO. 99-11-06435-CR FROM THE 9<sup>TH</sup> DISTRICT COURT  
MONTGOMERY COUNTY

*Per Curiam.* KELLER, P.J., and MEYERS, KEASLER, and HERVEY, JJ., would dismiss.

### ORDER

We have before us an application for writ of habeas corpus filed pursuant to Texas Code of Criminal Procedure Article 11.071, § 5.

In June 2000, a jury convicted applicant of the offense of capital murder. The jury answered the special issues submitted pursuant to Texas Code of Criminal Procedure Article 37.071, and the trial court, accordingly, set applicant's punishment at death. This Court affirmed applicant's conviction and sentence on direct appeal. *Swearingen v. State*, 101 S.W.3d 89 (Tex. Crim. App. 2003). On March 11, 2002, applicant filed in the trial court his

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initial application for writ of habeas corpus pursuant to Article 11.071. We denied relief. *Ex parte Swearingen*, No. WR-53,613-01 (Tex. Crim. App. May 21, 2003)(not designated for publication). On January 22, 2007, applicant filed a subsequent application in the convicting court. We remanded six of his claims to the convicting court for resolution. After the case was returned to this Court, we reviewed the findings of the convicting court, adopted them, and denied relief. *Ex parte Swearingen*, No. WR-53,613-04 (Tex. Crim. App. Jan. 16, 2008)(not designated for publication).

On January 16, 2008, applicant filed a second subsequent application in the convicting court. We remanded two of his claims to the convicting court for resolution. After the case was returned to this Court, we reviewed the findings of the convicting court, adopted them, and denied relief. *Ex parte Swearingen*, No. WR-53,613-05 (Tex. Crim. App. Dec. 17, 2008)(not designated for publication). On January 23, 2009, applicant filed a *pro se* subsequent application in the convicting court, and, on the same day, his attorney filed another subsequent application raising twelve claims. This Court dismissed both of those applications in separate orders. *Ex parte Swearingen*, No. WR-53,613-08 (Tex. Crim. App. Jan. 27, 2009)(not designated for publication), and *Ex parte Swearingen*, No. WR-53,613-09 (Tex. Crim. App. Jan. 27, 2009)(not designated for publication).

The current "Successor Application" was filed in the convicting court on June 22, 2011. In the application, applicant raises a single claim of actual innocence. On July 11, 2011, applicant filed in the convicting court a pleading entitled a "Supplemental Briefing to

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the Sixth Application for a Writ of Habeas Corpus.” Because this pleading raises a new and separate allegation of a due process violation, it is properly designated to be a subsequent application. We have reviewed both applications and find that they meet the requirements of Article 11.071 § 5. Accordingly, we stay applicant’s execution currently scheduled for Thursday, August 18, 2011, and remand both applications to the trial court to review and resolve the claims raised.

IT IS SO ORDERED THIS THE 28<sup>th</sup> DAY OF JULY, 2011.

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