



COURT OF CRIMINAL APPEALS  
P.O. BOX 12308, CAPITOL STATION  
AUSTIN, TEXAS 78711

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512-463-1597

2/7/2007

Criminal District Court No. 1  
Presiding Judge  
Dallas County  
133 N. Industrial, LB 38  
Dallas TX 75208

No.: WR-50,361-03  
Trial Court No.: F97-52818-H  
Styled: Nealy, Charles Anthony v. The State of Texas

Dear Judge:

Enclosed herein is an order entered by this Court regarding the above-referenced applicant.

If you should have any questions concerning this matter, please do not hesitate to contact me.

Sincerely,

Edward Marty  
General Counsel

EJM/bh

cc: Charles Anthony Nealy  
C/O JOHN D. NATION  
NATION & NATION  
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Presiding Judge

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

**WR-50,361-03**

**EX PARTE CHARLES ANTHONY NEALY**

**ON APPLICATION FOR WRIT OF HABEAS CORPUS  
IN CAUSE NO. F97-52818-H FROM THE  
CRIMINAL DISTRICT COURT NO. 1 OF DALLAS COUNTY**

*Per Curiam.*

**ORDER**

This is a subsequent application for writ of habeas corpus filed pursuant to Texas Code of Criminal Procedure, Article 11.071, Section 5. We remanded to the convicting court to resolve applicant's claim that the prosecutor suborned perjured testimony.

Applicant was convicted of capital murder on September 2, 1998. After review this Court affirmed the conviction and sentence of death. *Nealy v. State*, No. 73,267 (Tex.Crim.App. September 13, 2000). On July 7, 2000, applicant filed his initial application for writ of habeas corpus pursuant to Article 11.071. We denied relief. *Ex parte Nealy*, No.

WR-50,361-01 (Tex.Crim.App. October 24, 2001). Applicant's date for execution was set for November 16, 2006. On November 9, 2006, he filed this subsequent application alleging he was actually innocent based on a new recantation by his cousin who had testified at trial and that the prosecutor had suborned perjured testimony. We determined that the claim of prosecutorial misconduct had met the requirements of Article 11.071, Section 5, for consideration of subsequent claims. We dismissed his claim of actual innocence and remanded the claim of prosecutorial misconduct to the convicting court for resolution. The convicting court took evidence, received proposed findings of fact from the parties, and made findings of fact. The case has been returned to this Court for review.

We have reviewed the record and hold that the findings of the convicting court are supported by the record and we adopt them as our own. The convicting court found that "Memphis' allegations of prosecutorial misconduct and false trial testimony are untrue and were fabricated to affect a stay of execution in this case." Applicant also tried to raise a claim which was not before the convicting court, that Reginald Mitchell had an undisclosed deal with prosecutors. To the extent that claim is before this Court it is dismissed as an abuse of the writ, having been adversely decided against applicant in his initial application.

Applicant and his family attempted to pressure Memphis Nealy, applicant's cousin, to recant his trial identification testimony. This plan was discovered by the Dallas County District Attorney's office and they made contact with Memphis Nealy. Memphis, at first, asserted that he had testified truthfully at trial but a few days later, on the record before the

convicting court, he stated that a prosecutor had coerced him into testifying and that he had testified to what he had been told by the prosecutor. On remand the convicting court determined that Memphis had attempted to recant but had not changed his testimony in any material way from the testimony he gave to the jury on direct and cross examination. The court also found Memphis' testimony to be "not worthy of belief."

Applicant's subsequent application for writ of habeas corpus is denied, the stay previously entered is terminated.

IT IS SO ORDERED THIS THE 7<sup>TH</sup> DAY OF FEBRUARY, 2007.

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