

TEXAS COURT OF CRIMINAL APPEALS

Ex parte Bernardo Adan Tercero

Ex parte Tercero · No. WR-62,593-04; No. 62,593-04 · Decided August 25, 2015

SUMMARY

This document is Bernardo Adan Tercero's reply to the State's motion to dismiss his subsequent application for a writ of habeas corpus and to deny a stay of execution. He argues that his claim concerning unknowingly presented false testimony satisfies Texas's statutory requirements for a subsequent habeas application under Article 11.071 and requests a stay, an evidentiary hearing, and relief from his conviction and sentence.

CASE DETAILS

COURT	Texas Court of Criminal Appeals
JURISDICTION	Texas
DECIDED	August 25, 2015
DOCKET	WR-62,593-04; No. 62,593-04
DISPOSITION	other
PROCEDURAL POSTURE	Applicant Bernardo Adan Tercero filed a reply to the State's motion to dismiss his subsequent application for a writ of habeas corpus and motion to deny a stay of execution. The filing asked the Texas Court of Criminal Appeals to find that the application satisfied Texas Code of Criminal Procedure article 11.071, section 5(a)(1), grant a stay, and remand for an evidentiary hearing.
PRECEDENTIAL VALUE	none apparent; applicant's reply brief rather than court opinion
PARTIES	Bernardo Adan Tercero v. State of Texas

TOPICS

state post-conviction relief successive petitions due process prosecutorial misconduct criminal procedure

PRACTICE AREAS

state habeas corpus capital post-conviction litigation criminal procedure constitutional criminal law

QUESTIONS PRESENTED

1. Whether Tercero's subsequent habeas application satisfied the legal-unavailability requirement of Texas Code of Criminal Procedure article 11.071, section 5(a)(1), based on *Chabot v. State*.
2. Whether the alleged presentation of unknowingly false testimony by the State's witness stated a potentially meritorious due-process claim warranting habeas relief.
3. Whether the execution should be stayed and the case remanded to the trial court for an evidentiary hearing.

FACTUAL BACKGROUND

According to the filing, witness Ms. Cotera testified that Tercero made statements indicating an intent to kill during a robbery. A 2000 investigator's memorandum allegedly recorded that Cotera later acknowledged giving some false testimony and described conduct by prosecutors that caused her fear and anger. Tercero argued that Cotera's testimony was central to proving specific intent to kill because other witnesses described a face-to-face struggle and did not see him aim or point the gun at anyone.

PROCEDURAL HISTORY

The document states that Tercero had previously filed a 2008 subsequent state habeas application. He sought to pursue a later claim based on allegedly false testimony by witness Ms. Cotera, relying on *Chabot v. State* as a newly available legal basis. The State moved to dismiss under article 11.071, section 5 and opposed a stay of execution; the document is Tercero's reply and contains no ruling by the court.

DISPOSITION

other

REMAND INSTRUCTIONS

The filing requested, but the document does not order, a stay of execution and remand to the trial court for an evidentiary hearing concerning whether the State unknowingly presented false testimony.

CASES CITED

- *Chabot v. State*, 300 S.W.3d 768 (Tex. Crim. App. 2009)
- *Ex parte Chavez*, 371 S.W.3d 200, 207-08 (Tex. Crim. App. 2012)
- *Napue v. United States*, 360 U.S. 264 (1959)
- *Ex parte Harleston*, 431 S.W.3d 67, 89 (Tex. Crim. App. 2014)
- *Ex parte Weinstein*, 421 S.W.3d 656, 667-68 (Tex. Crim. App. 2014)