IN THE COURT OF CRIMINAL APPEALS
FOR THE STATE OF TEXAS

Ex parte	§	Writ No. WR-70,969-03
	§	(Trial Court Cause No. 04-02-09091)
RAMIRO FELIX GONZALES,	§	
	§	
Applicant	§	Scheduled Execution:
	§	*July 13, 2022*

MOTION FOR STAY OF EXECUTION

Ramiro Gonzales, through counsel, respectfully moves this Court for a stay of execution, currently scheduled for July 13, 2022, in light of the need for further proceedings regarding the subsequent application pursuant to Article 11.071, Sec. 5 of the Texas Code of Criminal Procedure filed today in both the Court of Criminal Appeals and the convicting court. Mr. Gonzales files this motion to allow for full and fair consideration of his three significant claims for relief, as follows:

(1) The State violated the Eighth Amendment and due process by presenting false and materially inaccurate expert testimony—now disavowed by the expert himself—at punishment.

(2) The State violated due process by presenting false testimony from jailhouse informant Frederick Lee Ozuna at punishment.

(3) Mr. Gonzales's death sentence violates the Eighth Amendment because there exists a national consensus that the death penalty is an excessive punishment for offenders less than 21 years old at the time of the offense.

These three distinct constitutional claims for relief are based on new, previously unavailable legal and factual bases, as set out further below and in the accompanying habeas application.

If this Court is not prepared to authorize the case under Section 5 because of the complexity of the factual and legal issues raised, it should stay the execution to allow time for a fair adjudication of these substantive claims.

BASIS FOR A STAY OF EXECUTION

I.

Ramiro Gonzales was 18 years and 71 days old in 2001 when he committed the offense for which he was sentenced to death. At his 2006 trial, the prosecution urged the jury to find a probability of future dangerousness based on an erroneous diagnosis of antisocial personality

disorder, evidence of falsely inflated recidivism rates, materially false testimony of a jailhouse inmate, and a history of impulsive acts by a traumatized and immature teenager.

Specifically, the State elicited extensive testimony from its expert witness, psychiatrist Dr. Edward Gripon, that was materially inaccurate in not just one but four respects that completely undermine the reliability of his testimony. Dr. Gripon told the jury that Mr. Gonzales had antisocial personality disorder (what, as Dr. Gripon explained, was formerly called "psychopathy" or "sociopathy"), 41 RR 67-70; that he possibly had "some type of significant underlying psychosexual disorder," *id.* at 82; and that he would "certainly" pose a threat, even if incarcerated, because of "the presence of … antisocial personality disorder, and clearly … antisocial features." *Id.* at 92. The State also elicited testimony from Dr. Gripon discounting the possibility that Mr. Gonzales's criminal offenses were attributable to his struggles with drug addiction. *Id.* at 80-81. Finally, the State elicited extensive testimony from Dr. Gripon about the recidivism rates for sex offenders that was demonstrably false. Thus, Dr. Gripon testified that persons who commit sexual assault "have an extremely high rate of … recidivism." 41 RR 84; *see also id.* at 86 (sexual

assault "frequently" is "not something that … a person does one time and then quits. There is a very high incidence of continued reoffending in those cases."). Specifically, Dr. Gripon asserted that "lots of data" supported a recidivism rate "in the eighty percentile or better." *Id.* at 88. Dr. Gripon added that "sexual assault has the highest continuum of recidivism" when looking at "types of significant, aggressive, violent behavior." *Id.* at 87. In response to the prosecutor's question about what type of offender presents "the worst prognosis for recovery," Dr. Gripon responded that "people who have sexual related offenses have the most difficulty with treatment, and they have an extremely high rate of recurrence." *Id.* at 87-88.

But as Mr. Gonzales's subsequent application demonstrates, the diagnosis confidently pronounced by the State's psychiatric expert at punishment—that Mr. Gonzales has antisocial personality disorder, which effectively dictates a future of violent misbehavior—was wrong. The recidivism rate to which the State's expert testified—"in the eightieth percentile or higher"—was not only false but, as an exposé in *The New York Times* reported in 2017, "an entirely invented number"

without any empirical support whatsoever.[1] The jailhouse informant has recanted his testimony in a sworn declaration appended to the subsequent application. And Dr. Gripon himself now recognizes that Mr. Gonzales does not meet the diagnostic criteria for antisocial personality disorder and "**does not** pose a threat of future danger to society." *See* Application Exhibit D (report of Dr. Edward Gripon).

As Mr. Gonzales demonstrates in the application, the legal and factual bases for his claims were not available to Mr. Gonzales at the time of the filing of his most recent state habeas application in February 2011. The articles and studies debunking the oft-cited "frightening and high" recidivism rate of over 80% were previously unavailable to Mr. Gonzales, as they were not published until after his most recent state habeas application was filed. And this Court has made clear since then that an applicant can show a due process violation based on the jury's consideration of false testimony even where it cannot be shown that the State was aware that the evidence was false. *Ghahremani*, 332 S.W.3d

[1] David Feige, *When Junk Science About Sex Offenders Infects the Supreme Court*, ("*Junk Science*"), THE NEW YORK TIMES (Sept. 12, 2017), at https://www.nytimes.com/2017/09/12/opinion/when-junk-science-about-sex-offenders-infects-the-supreme-court.html.

at 478.[2] On the date Mr. Gonzales filed his previous application, "the error standard … applied to [prior false testimony claims] was more difficult for an applicant to establish than the present standard now applicable to due process claims of unknowing use of false testimony." *Chavez*, 371 S.W.3d at 206-07. Dr. Gripon himself has now attested his trial testimony was wrong in significant respects, even though nothing indicates that the State was aware of that falsity at the time. Because Texas law now recognizes a due process violation under these circumstances and did not at the time of the filing of Mr. Gonzales's last habeas application, the legal basis for this claim is also "newly available" under the meaning of section 5. *Id.*

This Court has recognized that, even after a constitutionally valid death sentence has been imposed in a procedurally fair trial, new evidence may become available which demonstrates that the information underlying the death sentence was "materially inaccurate." *Johnson v.*

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[2] This Court decided *Ghahremani* on March 9, 2011. In affirming that *un*knowing use of false testimony by the State violates due process, the *Ghahremani* Court cited this Court's prior decision in *Ex parte Chabot*, 300 S.W.3d 768, 772 (Tex. Crim. App. 2009), where the State proposed—and the trial court adopted—findings recommending relief on due process grounds where a key government witness committed perjury. Because the parties did not dispute the falsity nor materiality of the testimony, the court found it "need not reach the issue of the State's knowledge." *Chabo*t, 300 S.W.3d at 772.

Mississippi, 486 U.S. 578, 590 (1988); *Estrada v. State*, 313 S.W.3d 274 (Tex. Crim. App. 2010). In such cases, the death sentence is irrevocably tainted and is a violation of the Eighth and Fourteenth Amendments.

II.

In addition, Mr. Gonzales presents a claim that the Eighth Amendment forbids the execution of a defendant for an offense committed when he was under the age of 21. In particular, three very recent developments—all constituting factual bases that were previously unavailable to Mr. Gonzales at the time of the filing of his prior state habeas application in February 2011—support this conclusion:

- First, in April 2020, the Texas Law Review published a comprehensive, nationwide study of all death sentences and executions imposed in the United States since the Supreme Court's decision in *Roper v. Simmons* in 2005.[3] The study identified three clear statistical trends against imposition of the death penalty on so-called "late adolescents" (those between the ages of 18 and 21): a diminishing rate of imposition of death sentences by juries at trial; a diminishing number of jurisdictions sentencing defendants in this age group to death; and a diminishing number of executions of late adolescents. These trends were particularly pronounced in relation to sentencing and

[3] John H. Blume, Hannah L. Freedman, Lindsey S. Vann & Amelia Courtney Hritz, *Death by Numbers: Why Evolving Standards Compel Extending Roper's Categorical Ban Against Executing Juveniles from Eighteen to Twenty-One*, 98 Tex. L. Rev. 921 (2020) (hereinafter, "*Death by Numbers*").

execution rates of older adults. The authors concluded from this data that "there is a national consensus against executing people under [age] twenty-one…. These trends confirm that the logic that compelled the Court to ban the executions of people under eighteen [in *Roper*] extends to people under twenty-one." Blume et al., *supra*, at 921.

- Second, on February 5, 2018, the American Bar Association's ("ABA") adopted a formal resolution calling on all death-penalty jurisdictions to prohibit capital punishment for any individual 21 years old or younger at the time of the offense.[4] The ABA cited the "evolution of both the scientific and legal understanding surround young criminal defendants and broader changes to the death penalty landscape" and concluded that "offenders up to and including age 21" should be categorically exempt from receiving the death penalty. *Id*. at 14.

- Third, on May 12, 2022, the American Psychological Association, the leading scientific and professional organization in the field of psychology, issued a resolution for public comment calling on "the courts and the state and federal legislative bodies of the United States to ban the application of death as a criminal penalty where the offense is alleged to have been committed by a person under 21." Application Exhibit J at 5.

[4] *See* American Bar Association House of Delegates Recommendation 111, *Late Adolescent Death Penalty Resolution*, (adopted Feb. 5, 2018), https://www.americanbar.org/content/dam/aba/administrative/death_penalty_representation/2018_my_111.pdf. The resolution states "[t]hat the American Bar Association, without taking a position supporting or opposing the death penalty, urges each jurisdiction that imposes capital punishment to prohibit the imposition of a death sentence on or execution of any individual who was 21 years old or younger at the time of the offense." *Id*. at 1.

The factual basis for this claim was not available at the time the prior application was filed. The nationwide study establishing that a national consensus against imposing the death penalty against defendants under age 21 was just published in the Texas Law Review in 2020. The ABA's formal resolution calling on all death-penalty jurisdictions to prohibit capital punishment for any individual 21 years old or younger at the time of the offense was passed in 2018. And most recently, the American Psychological Association's proposed resolution calling on "the courts and the state and federal legislative bodies of the United States to ban the application of death as a criminal penalty where the offense is alleged to have been committed by a person under 21" was opened for public comment in May 2022. All of these developments occurred within the last four-and-a-half years, while Mr. Gonzales's prior application was filed over a decade ago.

Further, recent developments—again, all previously unavailable to Mr. Gonzales at the time he filed his prior state habeas application—make clear that the same rationales the Supreme Court identified in categorically exempting others from the death penalty apply with equal force to those under the age of 21. To explain its ultimate conclusion that

juveniles are "categorically less culpable" than adults, the *Roper* Court cited a number of general differences related to brain development that "demonstrate that juvenile offenders cannot reliably be classified among the worst offenders." *Roper*, 543 U.S. at 568 (quoting *Atkins*, 536 U.S. at 316). But recent advances in neuroimaging and neuroscience studies have established that the prefrontal cortex, the part of the brain responsible for long-term thinking and planning, is not fully formed and functioning until the mid- to late-20s. As such, the brains of young adults are more similar to those of adolescents than the general adult population. And recent studies of racial disparities in capital sentencing and executions (including the April 2020 study published in the Texas Law Review) demonstrate that young men of color face a greater likelihood of being sentenced to death, which provides further rationale for exempting this particularly vulnerable class of defendants from the death penalty.

In sum, late adolescents display the same traits identified in *Atkins*, *Roper*, and *Miller* as diminishing blameworthiness and undermining the case for retributive punishment. Their reduced culpability removes them, as a class, from the group of defendants that can reliably be considered

the worst of the worst. Sentencing and execution patterns and developments in law and social attitudes show a national consensus in support of this exemption, along with a need to protect late adolescent defendants of color from the death penalty due to the heightened risk they face that racial discrimination will influence the sentencing decisions in their cases. The Court recognized in *Roper* that the 18-year cutoff was arbitrary, but cited scientific, societal, and legal justifications for drawing the line there. But in the intervening years, those justifications have eroded. Today, "[t]he evolving standards of decency that mark the progress of a maturing society"[5] demand that the categorical bar be extended to age 21. Thus, Mr. Gonzales's death sentence should be vacated and commuted to life imprisonment.

[5] *Trop v. Dulles*, 356 U.S. 86, 101 (1958).

CONCLUSION

Given the gravity of this case and the substantial constitutional issues presented in his subsequent habeas application, Mr. Gonzales respectfully asks that this Court stay his execution pending the resolution of those issues.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that the foregoing motion was served was served on Mark Haby, Medina County Criminal District Attorney, via the Court's electronic filing system, this 1st day of July, 2022.

/s/ Raoul D. Schonemann
Raoul D. Schonemann