

No. _____

IN THE
Supreme Court of the United States

ARTHUR LEE BURTON,
Petitioner,

v.

STATE OF TEXAS,
RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE TEXAS COURT OF CRIMINAL APPEALS

APPENDIX A

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

NO. WR-64,360-03

EX PARTE ARTHUR LEE BURTON, Applicant

**ON APPLICATION FOR WRIT OF HABEAS CORPUS
AND MOTION FOR STAY OF EXECUTION
IN CAUSE NO. 0760321 IN THE 338TH DISTRICT COURT
HARRIS COUNTY**

Per curiam.

ORDER

Before us is a subsequent application for a writ of habeas corpus filed pursuant to Texas Code of Criminal Procedure Article 11.071, Section 5.¹ Also before us is an accompanying Motion to Stay Execution.

Applicant Arthur Lee Burton was convicted of capital murder and sentenced to death in June 1998. On direct appeal, this Court affirmed the trial court's judgment of

¹ Unless otherwise indicated, all references to Articles in this order refer to the Texas Code of Criminal Procedure.

guilt but reversed Burton’s death sentence and remanded the case for a new punishment trial. *Burton v. State*, No. AP-73,204 (Tex. Crim. App. Mar. 7, 2001) (not designated for publication). In September 2002, following a second punishment trial, Burton was again sentenced to death. On direct appeal from this resentencing, this Court affirmed Burton’s death sentence. *Burton v. State*, No. AP-73,204 (Tex. Crim. App. May 19, 2004) (not designated for publication). Mandate issued June 2004.

In July 2000, Burton filed his first postconviction habeas application under Texas Code of Criminal Procedure Article 11.071, attacking his capital-murder conviction and initial death sentence.² This Court denied relief. *Ex parte Burton*, No. WR-64,360-02 (Tex. Crim. App. Apr. 22, 2009) (not designated for publication). In December 2003, Burton filed his second 11.071 application, this one attacking his second death sentence. This Court denied relief. *Ex parte Burton*, No. AP-75,790 (Tex. Crim. App. Apr. 1, 2009) (not designated for publication).

On July 30, 2024, Burton filed in the convicting court the instant application, his first subsequent 11.071 application. In it, Burton raises four claims. In claim one, Burton alleges that his execution would violate the Eighth and Fourteenth Amendments because he is intellectually disabled. *See Atkins v. Virginia*, 536 U.S. 304 (2002). In claim two, Burton alleges that scientific evidence not reasonably available in 2003 undermines his conviction. *See Art. 11.073*. In claim three, Burton alleges that the State used

² Unless otherwise specified, all mentions of “Articles” and “Chapters” in this opinion refer to the Articles and Chapters of the Texas Code of Criminal Procedure.

“scientifically invalid and misleading testimony” at trial, violating his right to due process. *See Ex parte Chabot*, 300 S.W.3d 768 (Tex. Crim. App. 2009). In claim four, Burton alleges that the State pursued the death penalty because of his race, “violat[ing] multiple state and federal constitutional protections.” *See, e.g., McCleskey v. Kemp*, 481 U.S. 279 (1987).

Having reviewed Burton’s application and appendix, we conclude that the application does not satisfy the requirements of Article 11.071, Section 5. Therefore, we dismiss the application as an abuse of the writ. *See* Art. 11.071, § 5(c). Burton’s Motion for Stay of Execution is denied. The Court shall not reconsider this Order on the Court’s own motion or otherwise.

IT IS SO ORDERED THIS THE 1ST DAY OF AUGUST, 2024.

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