



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

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**NO. AP-77,083**

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**KWAME A. ROCKWELL, Appellant**

**v.**

**THE STATE OF TEXAS**

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**ON APPEAL FROM THE DENIAL OF A MOTION TO DETERMINE  
EXECUTION COMPETENCY FROM CAUSE NO. 1195088D  
IN CRIMINAL DISTRICT COURT NO. 4  
TARRANT COUNTY**

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*Per curiam. KELLER, P.J., and KEASLER and HERVEY, JJ., would deny the stay.*

## **O P I N I O N**

In January 2012, a jury convicted appellant of capital murder (murder in the course of committing or attempting to commit robbery). In accordance with the jury's answers to the special issues submitted under Texas Code of Criminal Procedure Article 37.071, the trial court set appellant's punishment at death.<sup>1</sup> This Court affirmed appellant's

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<sup>1</sup> Unless otherwise indicated, all references to Articles refer to the Texas Code of Criminal Procedure.

conviction and sentence on direct appeal. *Rockwell v. State*, No. AP-76,737 (Tex. Crim. App. Dec. 11, 2013)(not designated for publication).

Appellant filed his initial post-conviction application for a writ of habeas corpus in the convicting court on September 17, 2013. This Court denied relief. *Ex parte Rockwell*, No. WR-80,232-01 (Tex. Crim. App. Dec. 17, 2014)(not designated for publication). The trial court later set appellant's execution for October 24, 2018.

On October 3, 2018, appellant filed a motion in the trial court, pursuant to Article 46.05, challenging his competency to be executed and seeking the appointment of mental-health experts to evaluate his execution competency. *See* Art. 46.05(a) and (f). On October 12, the trial court issued an order in which it found that appellant had failed to make a threshold showing raising a substantial doubt regarding his competency to be executed. Thus, the trial court declined to appoint any experts to evaluate appellant. This is an appeal of the trial court's ruling on that order. Art. 46.05(g).

In his appellate brief, appellant raises two claims. In his first claim, appellant asserts that "the trial court abused its discretion in finding [that he] is not [sic] competent to be executed when the evidence that he is currently not competent is undisputed." Because this question is not before us at this time, we decline to address it. The only issue currently before this Court is the subject of appellant's second claim, that is, whether the trial court erred in ruling that appellant failed to raise a substantial doubt of his competency to be executed.

After considering the pleadings of the parties and the record, we conclude that appellant raised a substantial doubt that he is not competent to be executed. We reverse the ruling of the trial court and order the trial court to appoint at least two mental-health experts pursuant to Article 46.05(f). Appellant's execution is stayed and the case is remanded to the trial court for proceedings consistent with this opinion.

Do not publish

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