IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-13,374-05

Ex parte BOBBY JAMES MOORE, Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS IN CAUSE. NO. 314483-C IN THE 185TH JUDICIAL DISTRICT COURT FROM HARRIS COUNTY

KELLER, P.J., delivered the opinion of the Court in which KEASLER, HERVEY, RICHARDSON, YEARY, KEEL, WALKER and SLAUGHTER, JJ., joined. NEWELL, J., did not participate.

In this habeas proceeding, Applicant seeks to be exempted from the death penalty on the ground that he is intellectually disabled. The habeas court agreed with Applicant, citing what it considered to be the contemporary standards for an intellectual disability diagnosis.

We disagreed with the habeas court for a variety of reasons falling within two overarching categories: (1) because the habeas court failed to follow standards set out in our caselaw,[1] and (2) because the habeas court failed to consider, or unreasonably disregarded, "a vast array of evidence

[1] *Ex parte Moore*, 470 S.W.3d 481, 486-89 (Tex. Crim. App. 2015), *vacated by Moore v. Texas*, 137 S. Ct. 1039 (2017).

in this lengthy record that cannot rationally be squared with a finding of intellectual disability."[2] The caselaw standards upon which we relied were originally promulgated in our decision in *Ex parte Briseno*.[3] With respect to an evaluation of adaptive deficits, *Briseno* set forth a number of factors to be considered.[4]

Vacating our decision, the Supreme Court concluded that some of the standards in our caselaw did not comport with the Eighth Amendment's requirements regarding an intellectual disability determination.[5] The Supreme Court was especially critical of the *Briseno* factors.[6]

On remand, we accepted the Supreme Court's directive to rely upon contemporary standards and adopted the framework set forth in the DSM-5, the most recent edition of the DSM.[7] We also expressly abandoned reliance on the *Briseno* factors.[8] Nevertheless, after further analysis, we concluded "that Applicant has failed to show adaptive deficits sufficient to support a diagnosis of intellectual disability."[9]

The Supreme Court again granted certiorari to review our decision.[10] The Supreme Court

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[2] *Id.* at 489.

[3] 135 S.W.3d 1 (Tex. Crim. App. 2004).

[4] *Id.* at 8-9.

[5] *See Moore v. Texas*, 137 S. Ct. 1039 (2017).

[6] *Id.* at 1051-52.

[7] *Ex parte Moore*, 548 S.W.3d 552, 555, 559-60 (2018), *rev'd by Moore v. Texas*, 139 S. Ct. 666 (2019).

[8] *Id.* at 560.

[9] *Id.* at 573. *See also id.* at 562-73.

[10] *Moore v. Texas*, 139 S. Ct. 666, 667 (2019).

criticized our decision as continuing to engage in types of analysis that it had previously found wanting.[11] Although the Supreme Court found "sentences here and there suggesting other modes of analysis consistent with" its directives, it found that there were "also sentences here and there suggesting reliance upon what [it] had earlier called 'lay stereotypes of the intellectually disabled.'"[12] The Supreme Court further concluded, "on the basis of the trial court record," that "Moore has shown he is a person with intellectual disability."[13]

This last conclusion of the Supreme Court is determinative. Having concluded that Applicant is a person with intellectual disability that is exempt from the death penalty, the Supreme Court has resolved Applicant's claim in his favor.[14] There is nothing left for us to do but to implement the Supreme Court's holding. Accordingly, we reform Applicant's sentence of death to a sentence of life imprisonment.

Delivered: November 6, 2019

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[11] *Id.* at 670. *See also id.* at 670-72.

[12] *Id.* at 672.

[13] *Id.*

[14] *See Atkins v. Virginia*, 536 U.S. 304 (2002).