

**Court of Criminal Appeals**  
**May 8, 2014**

***Ex parte Campbell***

No. WR-44,551-05

Case Summary written by Jessica Rugeley, Online Edition Editor.

*Per Curiam.*

A jury found Campbell guilty of capital murder and the trial court set punishment at death based on the jury's answer to the special issues submitted pursuant to Texas Code of Criminal Procedure Article 37.071. This Court affirmed on direct appeal. This Court also denied Campbell's initial application for a writ of habeas corpus. Campbell again filed, arguing that he was mentally retarded and his execution would violate the Eighth Amendment. This Court dismissed the application. He filed a second subsequent application asserting *Brady* and actual innocence claims and was that application was dismissed. This Court again denied relief on his third application asserting a *Penry* claim. In this application, Campbell again asserts mental retardation and further asserts ineffective assistance of counsel. The Court found that the application does not meet the requirements of Article 11.071 § 5 and dismissed the application. Campbell's motion to stay his execution is denied.

ALCALA, J., filed a dissenting statement in which PRICE, JOHNSON, and COCHRAN, JJ., joined.

Judge Alcala would grant the stay of execution and reopen Campbell's 2003 application for writ of habeas corpus, find evidence of mental retardation, and remand the application to the trial court for consideration on the merits. Campbell presented evidence of "severe childhood poverty, child abuse, extreme emotional disturbance, inadequate education opportunities, poor school performance, and a possible congenital risk factor for mental retardation." In this application, Campbell showed new evidence that was previously unavailable to him. His IQ score is 71, which would indicate mental retardation. This issue would have been raised in a prior writ had TDCJ, which administered the test, not misinformed former habeas counsel. Applicant's counsel also just received records from his elementary school, which the district attorney's office has had since 1991. These records show that Campbell's performance fell both the mean standard on two mental ability tests. This application also includes an affidavit from Dr. Leslie D. Rosenstein, a clinical neuropsychologist, who diagnosed Campbell as having mild mental retardation. Thus, Judge Alcala states that the Court should reconsider Campbell's mental retardation claim.