

**Court of Criminal Appeals**  
**January 15, 2016**

***In re Masterson***

Nos. WR-59, 481-04 and WR-59, 481-05

Case summary written by Ashleigh Hammer, Staff Member.

**PER CURIAM.**

Richard Allen Masterson was found guilty of capital murder in April 2002. The jury subsequently sentenced Masterson to death, and this court affirmed his conviction and sentence on appeal. The court denied Masterson's initial post conviction application for a writ of habeas corpus, and dismissed Masterson's subsequent writ application. In December 2015, Masterson filed a second writ application and a motion to stay his execution. The court similarly dismissed the writ application and denied his motion for a stay. On January 12, 2016, Masterson filed two motions for leave to file petitions for writs of prohibition and two writs of prohibition.

Without articulating its reasons, the court, in a per curiam opinion, denied leave to file in both cases.

**JUDGE ALCALA, concurring.**

Judge Alcala concurred in the result, but wrote separately to articulate her reasons for denying the motions for leave to file the writs of prohibition. Judge Alcala noted that Masterson failed to meet the stringent pleading requirement of the request.

Judge Alcala also wrote separately to explain her rationale for rejecting Masterson's challenge to the newly enacted § 552.1081 of the Texas Government Code, which protects the confidentiality of certain information regarding the State's execution procedures. In particular, it exempts from public disclosure requirements, identifying information of (1) any person who participates in the execution, including the supplier and administrator of the drug substance, and (2) any person or entity that manufactures, transports, test, procures, compounds, proscribes, dispenses, or provides a substance or supplies in an execution. Masterson challenged § 552.1081 on both state and

federal grounds, arguing that the government's protection of this information hindered his ability to ensure that his execution will be carried out in conformity with the constitutional prohibition on cruel and unusual punishment, in violation of the First and Fourteenth Amendments to the United States Constitution and the open courts provisions in the Texas Constitution.

In order to meet the stringent pleading requirements for prohibition relief, Judge Alcala noted that two conditions must be met: (1) The individual must show that he has a clear right to the relief sought under well-settled and established law, and (2) he has no adequate remedy at law. According to Judge Alcala, Masterson did not meet the first condition because his request to prohibit the State from carrying out his execution based on the unconstitutionality of § 552.1081 would involve a judicial decision of this court because this issue is one of first impression, and has not been litigated previously. Furthermore, Masterson did not meet the second condition because his claim could have been properly addressed in a civil rights lawsuit, although it might not have been ripe until his execution date was set. In all, Judge Alcala concluded that because Masterson presented nothing more than a desire to discover the identity of the drug supplies, he failed to meet the pleading requirements for a writ of prohibition.

Lastly, Judge Alcala noted that the court's standard for granting extraordinary relief has been applied inconsistently. To remedy the flux between the court's application of a liberal standard in some cases and a stringent standard in other cases, Judge Alcala stated that the court's majority orders granting or denying extraordinary relief should explain its rationale so that litigants can better understand the rulings.