



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

WR-41,168-07

IN RE JOHN R. ROACH

**ON APPLICATION FOR WRIT OF MANDAMUS
IN CAUSE NO. W296-80233-90 FROM THE
296TH DISTRICT COURT OF COLLIN COUNTY**

Per Curiam.

ORDER

We have before us a motion for leave to file a petition for writ of mandamus filed by the district attorney of Collin County to order the judge in this case to vacate his order withdrawing the death warrant and to reinstate the previously ordered death warrant.

Hood was convicted of the capital murder of Ronald Williamson and Tracie Lynn Wallace. The jury answered the special issues in such a manner that a sentence of death was imposed on August 29, 1990. This Court affirmed the conviction and sentence on direct appeal. *Hood v. State*, AP-71,167 (Tex. Crim. App. November 24, 1993) *cert. denied*, 513

U.S. 834 (1994). Hood's initial application for writ of habeas corpus was denied. *Ex parte Hood*, WR-41,168-01 (Tex. Crim. App. April 21, 1999). A subsequent application was filed in the trial court on May 24, 2004. The subsequent application was dismissed. *Ex parte Hood*, WR-41,168-02 (Tex. Crim. App. April 13, 2005). Hood filed a second subsequent application on June 22, 2005. We remanded to the convicting court for resolution of the claim. When the case was returned to this Court we held that applicant had, in fact, not met the requirements of Article 11.071, Section 5, for consideration of subsequent claims and dismissed his application. *Ex parte Hood*, 211 S.W.3d 767 (Tex. Crim. App. 2007). On May 6, 2008, he moved this to reconsider his direct appeal, we denied the motion. *Hood v. State*, No. AP-71,167 (Tex. Crim. App. May 14, 2008). Hood filed a subsequent application for writ of habeas corpus and an original application for writ of habeas corpus on June 12, 2008. We dismissed the application filed under Article 11.071 and denied leave to file the original application. *Ex parte Hood*, WR-41,168-04 & WR-41,164-05 (Tex. Crim. App. June 16, 2008). Today, June 17, 2008, we denied a second original application for writ of habeas corpus. *Ex parte Hood*, WR-41.168-06 (Tex. Crim. App. June 17, 2008).

With no active pleadings before the trial court, the trial judge withdrew the death warrant. A trial judge has the authority to withdraw or modify a death warrant "if the court determines that additional proceedings are necessary on a subsequent or untimely application for a writ of habeas corpus filed under Article 11.071." Tex. Code Crim. Proc., Art. 43.141(d) (emphasis added). This Court had dismissed the subsequent application and the judge had no power to consider the merits of any claims in those or possible future

applications without the permission of this Court. Tex. Code Crim. Proc., Art. 11.071, Sec. 5(a). The trial judge was, therefore, without authority to act. However, after acting without authority, the trial judge recused himself from this case, thereby transferring authority to the regional presiding judge, and no longer has any authority to rule on any matter in this case. Therefore, mandamus does not lie against the respondent trial judge.

Leave to file the application is denied.

IT IS SO ORDERED THIS THE 17TH DAY OF JUNE, 2008.

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