

CAPITAL CASE

No. 17-5592

IN THE
SUPREME COURT OF THE UNITED STATES

DONALD MIDDLEBROOKS,

Petitioner

vs.

TONY MAYS, Acting Warden,

Respondent

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

MOTION TO RESCHEDULE OR DEFER CONSIDERATION
OF PETITION FOR REHEARING

Donald Middlebrooks has sought rehearing, requesting that this Court grant rehearing in light of the pending petition in *Wessinger v. Vannoy*, U.S. No. 17-6844, where Middlebrooks' petition and *Wessinger* present identical issues. *See* Donald Middlebrooks' Supplemental Brief In Support of Rehearing (filed Jan. 24, 2018).

Middlebrooks' petition for rehearing is currently set for conference on Friday, February 16, 2018. *Wessinger* was initially set for conference on January 19, 2018, but was rescheduled for the February 16, 2018 conference as well. On February 13,

2018, however, this Court rescheduled *Wessinger* again, but has not set a new conference date.

Middlebrooks and Wessinger should be treated identically. As a matter of fairness and justice, should this Court grant certiorari in *Wessinger*, Donald Middlebrooks should be entitled to the same relief granted to Wessinger. Equal application of the law is assured if both petitions are considered at the same conference. As a practical matter, therefore, because *Middlebrooks* and *Wessinger* present identical issues, they should be considered in tandem as a matter of fairness and fundamental justice.

With *Wessinger* having now been rescheduled -- but with Middlebrooks' rehearing petition still set for the February 16, 2018 conference -- Donald Middlebrooks faces the potential unfairness of having his rehearing petition denied only to have this Court later grant certiorari in *Wessinger* on the very same issue. That would be truly unfair to Donald Middlebrooks, especially in a capital case.

To avoid such unfairness and to ensure equal application of the law, this Court should thus reschedule Middlebrooks' rehearing petition or defer consideration of Middlebrooks' petition until the conference(s) at which this Court considers *Wessinger*.

Respectfully Submitted,



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