**No. 17A789**

**IN THE SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 2017**

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**VERNON MADISON, Petitioner,**

**v.**

**STATE OF ALABAMA, Respondent.**

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**ON PETITION FOR WRIT OF CERTIORARI TO THE ALABAMA SUPREME COURT**

**CAPITAL CASE**

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# STATE OF ALABAMA'S OPPOSITION TO MADISON'S APPLICATION FOR A STAY OF EXECUTION

Madison's inequitable conduct in delaying the filing of his most recent legal claim until the day before his scheduled execution should be sufficient to warrant denial of the requested stay of execution. *See Nelson v. Campbell*, 541 U.S. 637, 649 (citing *Gomez v. United States Dist. Ct. for the N. Dist. of Cal.*, 503 U.S. 653 (1992) (per curiam)). The amendment to Alabama's capital sentencing law that forms the basis of his most recent argument was signed into law on April 11, 2017. (Pet. 7.) The State moved the Alabama Supreme Court to issue the current death warrant on November 8, 2017. The following day, Madison filed an opposition to the State's motion to set an execution date, without any mention of this claim or the recent change to Alabama's law. That court issued its order setting Madison's execution date on November 16, 2017. Madison waited sixty-nine days after the issuance of this order before attempting to raise his constitutional claim, leaving little more than twenty-four hours until his scheduled execution.

But Madison's application for a stay should be denied for an additional reason, one that is likely related to his failure to seek vindication of his claim in a timely manner. By waiting until the last minute to pursue his current constitutional claim, Madison appears to have felt the need to bypass the state circuit court and intermediate appellate court, because he filed his "petition" directly with the Alabama Supreme Court. Alabama law, however, does not permit the Alabama Supreme Court to grant relief on such claims under its original jurisdiction.

The Alabama Supreme Court's rules provide that a post-conviction claim challenging the constitutionality of a sentence must be brought by way of a Rule 32 petition. Ala. R. Crim. P. 32.1(a), (c), 32.4. Accordingly, Madison did not seek relief in conformity with the court's rules. Thus, the question became whether the Alabama Supreme Court had the legal authority to consider Madison's claim in the first instance under its "original jurisdiction." As briefed to that court, the answer to that question is "no."

As a jurisdictional matter, the constitution of Alabama of 1901 vests the Alabama Supreme Court with original jurisdiction of cases and controversies only "as provided by this Constitution." ALA. CONST. 1901, art. VI, § 140 (b)(1). This limitation is key, because absent an explicit constitutional grant of authority to present legal claims to that court in the first instance, the court's original jurisdiction is limited to the issuance of "such remedial writs or orders as may be necessary to give it general supervision and control of courts of inferior jurisdiction." *Id*. art. VI, § 140(b)(2). That court also possesses appellate jurisdiction "as may be provided by law." *Id*. art. VI, §

140(c). Madison's petition did not satisfy any requirement for obtaining review of an "original" action by the Alabama Supreme Court.

The circuit court of a prisoner's conviction is the court possessing proper jurisdiction to review a post-conviction challenge to the constitutionality of a sentence. *See Ex parte Williams*, 812 So. 2d 318, 322-23 (Ala. 2001). The Alabama Court of Criminal Appeals possesses exclusive appellate jurisdiction over the circuit courts in such criminal matters. *Ex parte State (In re: State v. Fowler)*, 32 So. 3d 21, 25 (Ala. 2009); *see also* ALA. CODE § 12-3-9 (1975) ("The Court of Criminal Appeals shall have exclusive appellate jurisdiction of . . . all felonies, including all post conviction writs in criminal cases."). The Alabama Supreme Court possesses appellate jurisdiction over these courts, but it does not possess original jurisdiction to consider such claims in the first instance. *See Ex parte Evett*, 89 So. 2d 88, 90 (Ala. 1956) (acknowledging that "the Constitution does not invest the Supreme Court with original jurisdiction in criminal actions"); *see also Worthington v. Worthington*, 111 So. 224, 449 (Ala. 1927) ("[T]he jurisdiction of this court is in general revisory, and appellate only, with the exceptions named in the Constitution, and this motion does not come within any of the exceptions mentioned in the Constitution."). Thus, In *Russo v. Alabama Department of Corrections*, 149 So. 3d 1079, 1081-82 (Ala. 2014), the court recognized the constitutional limitations on its original jurisdiction, barring relief where an action was not first filed in the circuit court.

Nor did Madison properly invoke the Alabama Supreme Court's appellate jurisdiction. Neither the circuit court nor the Alabama Court of Criminal Appeals

could have been subjected to the Alabama Supreme Court's control or supervision over a legal issue that had not been presented for their consideration. *See, e.g.*, *Ex parte Parks*, 923 So. 2d 330, 333 (Ala. 2005) ("The critical consideration for the preservation of error for appellate review is that the trial court be sufficiently informed of the basis of the defendant's argument."); *Ex parte Weaver*, 530 So. 2d 258, 259 (Ala. 1988) ("Because the basis for the objection was not made so as to allow the trial court to make an informed decision on this point of law, the error was not preserved for review.").

Rather than pursue his claim through Alabama's legal procedure for presenting a constitutional challenge to a sentence, Madison sought to skip to the front of the line in order to seek this Court's certiorari review, but having given the State no legitimate opportunity to review the claim on its merit. For reasons of federalism and comity, this Court should decline to issue a stay to consider whether to exercise its certiorari jurisdiction, because the state court's judgment rested upon on an independent and adequate state law ground that did not reach the constitutional question presented. *See, e.g.*, *Berry v. Mississippi,* 552 U.S. 1007 (2007) (mem.); *Wilson v. Loew's Inc.*, 355 U.S. 597 (1958); *see also Beard v. Kindler*, 558 U.S. 53 (2009); *Coleman v. Thompson*, 501 U.S. 722 (1991); *cf. Breard v. Greene*, 523 U.S. 371 (1998) (declining to exercise original habeas jurisdiction where the prisoner failed to raise his claim in the state courts, and noting that constitutional claims are subject to procedural default).

Today, this Court's time and attention will be occupied by two separate petitions for writ of certiorari filed by Madison. The first reached this Court on Monday, having been filed in the state circuit court on December 18, 2017. The State should not be punished for Madison's creation of extra work for the Court on the day of his execution, when he could have initiated this claim last April, November, or December. Madison's manipulative decision to create extra work for this Court on the day of his execution is not grounds for this Court to determine it needs additional time, as this would keep a maximum-security prison on lockdown longer than necessary, would create additional safety concerns for corrections employees already working overtime, or to delay justice for the family members present to see justice carried out. Rather, it is cause for this Court to rebuff his efforts in the name of federalism, comity, and equity.

## CONCLUSION

In the light of these considerations, the State of Alabama asks that Madison's unreasonable, last-minute application for a stay of execution be denied.

STEVE MARSHALL
ATTORNEY GENERAL
BY—

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