

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2017

ERIC SCOTT BRANCH,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

*On Petition for a Writ of Certiorari to the
Supreme Court of Florida*

APPLICATION FOR A STAY OF EXECUTION

***THIS IS A CAPITAL CASE
WITH AN EXECUTION SCHEDULED FOR
THURSDAY, FEBRUARY 22, 2018, AT 6:00 P.M.***

To the Honorable Clarence Thomas, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Eleventh Circuit:

The State of Florida has scheduled the execution of Petitioner, Eric Scott Branch, for **February 22, 2018, at 6:00 p.m.** Petitioner requests a stay of execution pending the consideration and disposition of the petition for a writ of certiorari that he is filing simultaneously with this application.¹ The petition is sufficiently

¹ Petitioner requests expedited consideration of the petition. See Petition at 1 n.1.

meritorious for this Court to grant review. *See Barefoot v. Estelle*, 463 U.S. 880, 895-90 (1983).

Just this month, the American Bar Association's House of Delegates passed a resolution calling on all jurisdictions that still use capital punishment to prohibit the imposition of the death penalty on people who were twenty-one years of age or younger at the time of the offense. *See* App. 231-38 (ABA Resolution 111, adopted Feb. 5, 2018). The ABA resolution was a reaction to the current scientific consensus that because of limited brain development, youths age twenty-one and under do not have the moral culpability necessary for a death sentence to comply with the Eighth Amendment.

Petitioner was twenty-one at the time of the offense. Petitioner proffered expert reports about his limited brain development and described today's scientific consensus. He requested a hearing based on his evidentiary proffer, but the Florida courts summarily denied relief on the basis of their understanding of this Court's decision in *Roper v. Simmons*, 543 U.S. 551 (2005). *See Branch v. State*, Nos. SC18-190, SC18-218, 2018 WL 897079 (Fla. Feb. 15, 2018). No court has afforded Petitioner the opportunity to present his evidence.

The question presented by the accompanying Petition is:

Given the advancements in the scientific understanding of late adolescent brain development since *Roper*, should Florida have allowed Petitioner the opportunity to present proof that his execution for a crime he committed during late adolescence would violate the Eighth and Fourteenth Amendments because his age and particular lack of mental development reduced his culpability and rendered him ineligible for a death sentence?

As the Petition describes, the question is particularly worthy of review in light of this Court’s decisions in *Hall v. Florida*, 134 S. Ct. 1986 (2014), and *Moore v. Texas*, 137 S. Ct. 1039 (2017), where the Court emphasized that in Eighth Amendment settings, courts should not disregard the applicable scientific consensus and the need for an individualized assessment of moral culpability. Before he is put to death, Petitioner should be allowed a hearing at which he can present proof that his execution would violate the Eighth Amendment. His case-specific proffer and the evidence he presented about today’s scientific consensus demonstrate that his particular development is insufficient to justify capital punishment.

Medical science today recognizes that a strict age-eighteen cutoff is insufficient to ensure that those who lack the requisite culpability—specifically, youths in their late teens and early twenties whose still-developing brains cause behavior and decisions analogous to juveniles under eighteen—are not put to death. A central question in this case therefore is whether the understanding of the Eighth Amendment described in *Hall* and *Moore* should be applied to cases involving late adolescent offenders. As the petition explains, this Court should permit those within the current medically-recognized range to present proof of their brain immaturity not simply as mitigation, but rather to demonstrate ineligibility for the death penalty.

Because the “death penalty is the gravest sentence our society may impose[,] [p]ersons facing that most severe sanction must have fair opportunity to show that the Constitution prohibits their execution.” *Hall*, 134 S. Ct. at 2001. Otherwise, there

is an “unacceptable risk” that death sentences will be imposed on those who lack the culpability for capital punishment. *Id.* at 1990.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court stay his execution and grant his petition for a writ of certiorari to address the important constitutional questions raised in this case.

Respectfully submitted,

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