

No. A_____

In the
Supreme Court of the United States

EX PARTE JOHN WILLIAM KING,
Petitioner.

On Petition for Writ of Certiorari to the
Texas Court of Criminal Appeals

APPLICATION FOR A STAY OF EXECUTION
PRESENTED TO THE HONORABLE SAMUEL A. ALITO, JR.
AS CIRCUIT JUDGE

**JOHN WILLIAM KING IS SCHEDULED
TO BE EXECUTED ON APRIL 24, 2019**

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**JOHN WILLIAM KING IS SCHEDULED
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**To the Honorable Samuel A. Alito, Jr., Associate Justice of the Supreme Court
of the United States and Circuit Justice for the Fifth Circuit:**

John William King was convicted of capital murder and is facing an execution date of April 24, 2019. (*See Appendix*). As detailed in his accompanying petition for writ of certiorari, his application is based on a claim pursuant to this Court's recent holding in *McCoy v. Louisiana*, 138 S. Ct. 1500 (2018).¹

¹ Mr. King's underlying state subsequent application in the Texas Court of Criminal Appeals ("TCCA"), the basis of his petition, was also based on that Court's holding in *Turner v. State*, 2018 WL 5932241 (Tex. Crim. App. Nov. 14, 2018) wherein that case was reversed and remanded on the basis of *McCoy*, under factual circumstances very similar to Mr. King's case. However, *Turner* was not discussed in the TCCA's opinion.

On April 22, 2019, the Texas Court of Criminal Appeals, in a split decision by a 5 to 4 vote, dismissed Mr. King’s subsequent application and denied his motion for a stay of execution. *Ex parte John William King*, No. WR-49,391-03 (Tex. Crim. App. April 22, 2019). The four dissenting judges who voted to grant Mr. King’s subsequent writ and his motion for stay of execution raise substantial questions relevant to this application for a stay of execution, including heretofore unresolved questions regarding the scope of *McCoy*, Mr. King’s innocence, and the retroactivity of this Court’s holding in *McCoy* (*See id.*, Keasler, J., dissenting, joined by Hervey, Richardson, Walker, JJ.) as do the two concurring opinions.² (*Id.*, Yeary, J., concurring; Newell, J., concurring).

A. Relevant Background.

Mr. King, along with two co-defendants, was indicted for capital murder in conjunction with the kidnaping and death of James Byrd, Jr. in Jasper County, Texas. From the time of indictment through his trial, Mr. King maintained his absolute innocence, claiming that he had left his co-defendants and Mr. Byrd sometime prior to his death and was not present at the scene of the victim’s murder. Mr. King repeatedly expressed to defense counsel that he wanted to present his innocence claim at trial. When it appeared that his attorneys intended to concede Mr. King’s guilt anyways, Mr. King attempted to replace

² The concurring opinion of Judge Yeary raises the question of *McCoy*’s retroactivity; the concurring opinion of Judge Newell raises the question of the scope of *McCoy*’s applicability outside its own “unique circumstances” and conflates Mr. King’s previous claims of ineffective assistance of counsel for failure to present an innocence defense, *King v. Davis*, 883 F.3d 577 (2018), with his current claim under *McCoy*. *Ex parte John William King, supra* (Yeary, J, concurring; Newell, J., concurring).

them.³ He also wrote multiple letters to the court complaining that his attorneys refused to present an innocence defense. When the court did not intervene, he wrote a letter to a Dallas newspaper outlining his claim of innocence. Yet despite Mr. King’s explicit and repeated requests, his counsel conceded his guilt to murder at trial.

Both of King’s attorneys told the jury he was at the scene of the crime and was guilty of non-capital murder. One of them argued extensively that the State had not proved capital murder, and “[i]f [you] find him not guilty of capital murder, the alternative then comes to the lesser included offense. [non-capital murder]” [22 RR 44; ROA.9270].⁴ This attorney then again conceded King’s guilt to non-capital murder and even argued for a guilty verdict on non-capital murder:

Death is a death and murder, if you look at this Charge, is intentional—knowingly intentionally taking a human life. And if you feel that that’s done and that the State of Texas hasn’t proven beyond a reasonable doubt, the offense of capital murder, as required by proving [the] additional element of kidnapping beyond a reasonable doubt or attempted, *then you must find him guilty of [non-capital] murder.*” [22 RR 46] (emphasis added).

Contrary to the State’s arguments in the TCCA, Mr. King’s attorneys conceded all elements of the lesser included charge—non-capital murder—in violation of his Sixth

³ As used herein and in the accompanying petition for writ of certiorari, the words “concede” or “confess” refer to the actions of the trial attorneys in telling the jury that the defendant was guilty; they do not refer to or imply any concession or admission of guilt by the defendant himself, either at trial or thereafter.

⁴ “RR” refers to the Reporter’s Transcript of Mr. King’s trial (the trial transcript) with the volume number preceding the page number; “ROA” refers to the “Record on Appeal” as compiled in the Fifth Circuit Court of Appeals.

Amendment rights under *McCoy*. Mr. King’s counsel contested only one element of the capital murder charge: to be guilty under the prosecution’s capital murder theory, he must have committed murder in the course of committing another felony—in this case, kidnapping. *See* TEX. PENAL CODE ANN. §19.03(a)(2) (Vernon Supp. 1986)

Almost twenty years later, this Court held in *McCoy* that a defendant has a Sixth Amendment right to insist that his counsel maintain his innocence at trial, and that counsel’s concession of guilt over the defendant’s objections amounts to a constitutional violation. *See id.* at 1505. This is precisely the violation that occurred in Mr. King’s case—his Sixth Amendment rights were infringed when his attorneys conceded his guilt over his express wishes. Because a *McCoy* violation amounts to structural error, a new trial is required in Mr. King’s case.

Mr. King’s objective, consistent with his plea of “not guilty,” was to present a defense in the guilt phase, not to have his attorney concede guilt for the crimes. Defense counsel overrode that objective—and their client’s will—by instead presenting no defense or evidence of his innocence at all and conceding his guilt by telling the jury that he was present at the scene of Mr. Byrd’s murder. At the guilt phase final arguments, Mr. King’s attorneys both told the jury that the only issue was whether or not the victim had been kidnaped and that Mr. King was guilty of non-capital murder, but not capital murder.

In *McCoy*, this Court recently held for the first time that “it is the defendant’s prerogative, not counsel’s, to decide on the objective of his defense.” *Id.* at 1505. This new

declaration about the scope and nature of the defendant's Sixth Amendment rights provides the basis for Mr. King's subsequent application. The Constitution protects Mr. King's right to insist on a defense and object to the lawyers' "proposal to concede [defendant] committed these murders." *Id.* at 1509. "[I]t was not open to [defense counsel] to override [his] objection." *Id.* at 1509. For that reason, Mr. King is entitled to a new trial.

B. Reasons for Granting the Stay.

This Court has jurisdiction to enter a stay under 28 U.S.C. § 1651, 28 U.S.C. § 2101(f) and Supreme Court Rule 23. A stay can be entered "[i]n any case in which the final judgment or decree of any court is subject to review by the Supreme Court on a writ of certiorari." 28 U.S.C. § 2101(f). This Court has certiorari jurisdiction over "[f]inal judgments or decrees rendered by the highest court of a State in which a decision may be had," provided that such a decision infringes upon "any title, right, privilege, or immunity" granted by federal law." 28 U.S.C. § 1257(a). The Texas Court of Criminal Appeals ("TCCA") has denied Mr. King's application for a subsequent application for a writ of habeas corpus and his application for a stay of execution. This Court therefore has certiorari jurisdiction and can enter a stay while it considers Mr. King's petition.

Supreme Court Rule 10(c) ("Considerations Governing Review on Certiorari") states that one of "the reasons the Court considers" in determining whether to grant certiorari is when "a state court...has decided an important federal question in a way that conflicts with relevant decisions of this Court." Such is the situation here, as the TCCA has, in the majority

five-judge summary dismissal, ignored this Court’s clear directives in *McCoy* that “it is the defendant’s prerogative, not counsel’s, to decide on the objective of his defense.” *McCoy*, 138 S. Ct. at 1505.

This Court has also held in *Barefoot v. Estelle*, 463 U.S. 880, 895 (1983), in the context of federal habeas petitions, that the requisite “due consideration,” *id.* at 889, of a second or successive petition requires a stay whenever the petition “reflect[s] the presence of substantial grounds upon which relief might be granted.” *Id.* at 895. *Barefoot*, the leading authority on post-petition habeas corpus stays recognizes that a stay of execution is required whenever at least one claim is “not frivolous” or “colorable,” the claim is “debatable among jurists of reason and a court *could* resolve the claim favorably to the petitioner.” *Id.* at 888, 889, 893. *See also McFarland v. Scott*, 512 U.S. 849, 860 (1994) (O’Connor, J., concurring in the judgment in part and dissenting in part). This standard does not require the petitioner to show that he would prevail on the merits, but it does require him to show that the issues he presents are debatable among jurists of reason. *Barefoot*, 463 U.S. at 893 n.4. *See also Delo v. Stokes*, 485 U.S. 320, 321. A petition satisfies *Barefoot*’s requirement if it includes claims that “are debatable among jurists of reason” or that “are adequate to deserve encouragement to proceed further.” *Barefoot*, 463 U.S. at 893. This is also the situation here, as outlined in Mr. King’s accompanying petition.

This Court has used four factors in guiding its discretion in issuing a stay:

1) whether the applicant has shown a strong likelihood of success on the merits; 2)

whether the applicant will be irreparably injured absent a stay; 3) whether the stay will substantially injure the opposing parties; and 4) whether the public interest weighs in favor of a stay. *Nken v. Holder*, 556 U.S. 418, 434 (2009). Particularly in death penalty cases, stays should be granted to ‘give non-frivolous claims of constitutional error the careful attention they deserve,’ and when a court cannot “resolve the merits [of a claim] before the scheduled date of execution...to permit due consideration of the merits.” *Barefoot*, 463 U.S. at 888-889.

1. A Reasonable probability that this Court will grant certiorari.

In the context of a stay pending certiorari to this Court, the applicant need only show a “reasonable probability” that this Court will grant certiorari and a “fair prospect” that the decision below will be reversed. *Maryland v. King*, 567 U.S. 1301, 1302 (2012) (Roberts, C.J., in chambers). Mr. King’s issue under *McCoy* meets that standard as four judges of the TCCA voted to grant Mr. King a stay of execution, which easily meets the “reasonable probability” and “fair prospect” standard. Additionally, the TCCA’s five-to-four split decision raises substantial questions as to the ambit of *McCoy* and unresolved questions as to Mr. King’s innocence, both of which are relevant as to whether a stay is warranted.

The State’s motion to dismiss in the TCCA was based on an erroneous view of *McCoy* as involving effective assistance of counsel, not King’s Sixth Amendment right to client autonomy in presenting his case for innocence to his jury. This Court held that such claims are not based on effective assistance of counsel standards. *See McCoy*, 138 S. Ct. at 1510–1511. Two concurring opinions offer differing rationales for the majority’s summary

dismissal: the possible non-retroactivity of *McCoy* (*Ex parte King, supra*, Yeary, J, concurring); and that “the unique circumstances present in *McCoy* are not present in this case.” (*Id.*, Newell, J, concurring at *2) and the alleged similarity of Mr. King’s claim to the one previously raised in the Fifth Circuit Court of Appeals.⁵ (*Id.* at 2-3).

To the extent that the State’s opposition to the application and the TCCA’s dismissal was based on the State’s contention that “*McCoy* does not provide a new ‘legal basis’ which was previously unavailable, in that applicant’s claim could reasonably have been formulated from the decisions in *Florida v. Nixon*, 543 U.S. 175 (2004); *United States v. Cronin*, 466 U.S. 648 (1984); and various [unnamed] federal appellate cases,” *Ex parte John William King*, No. WR-49,391-03, State’s Motion to Dismiss at 13 n. 1, that unexplained contention, the probable basis of the majority’s summary dismissal, is clearly at odds with this Court’s holding in *McCoy* and is an unresolved question worthy of this Court’s attention.

This issue and these questions are worthy of scrutiny as they will undoubtedly re-occur as the lower courts apply *McCoy*. Mr. King should not be executed based on the State’s misconstruction and misapplication of this Court’s precedent.

2. Irreparable injury.

Mr. King is petitioning for certiorari on the eve of his execution scheduled for April 24, 2019. There is little doubt that a prisoner facing execution will suffer irreparable injury if the stay is not granted. *Wainwright v. Booker*, 473 U.S. 935, 935 n. 1 (1985) (mem.)

⁵ *King v. Davis*, 883 F.3d 577 (5th Cir. 2018), *cert denied*, 139 S. Ct. 413 (2018)

(Powell, J, concurring).

3 & 4. No substantial injury to the State and the public interest favors granting the stay.

When the government is the opposing party, the final elements of the stay analysis merge. *Nken*, 556 U.S. at 435. The issuance of a stay here will serve both the public and the State’s interest in seeing that justice is done because there is substantial evidence of Mr. King’s innocence.

The four-judge dissent clearly addresses the third criteria:

What harm do we risk by taking that course [granting a stay]? If King’s claims lack merit, then the justice he so richly deserves will only have been delayed. If, on the off chance, his claims are meritorious, the Court’s decision will have paved the way for an injustice that can never be undone. A few months’ delay seems a small price to pay to avoid that horrifying possibility—even if it is but a slight possibility.

Ex parte King, *supra*, Keasler, J, dissenting, joined by Hervey, Richardson and Walker, JJ.

The four-judge dissent also addresses the fourth “public interest” criteria:

What I do know is this: A death-sentenced man who has asserted his innocence since his capital-murder trial has asked us to review his claim that his trial lawyer overrode his express wishes to pursue a defense consistent with his innocence. In light of this Court’s recent earnest, but ultimately unsuccessful, attempts to implement new Supreme Court precedent in death-penalty cases, and especially in light of the horrible stain this Court’s reputation would suffer if King’ claims of innocence are one day vindicated (or, perhaps, if the Supreme Court eventually decides that *McCoy* should apply retroactively), I think we ought to take our time and decide this issue unhurriedly. I would grant the stay.

Id.

Another judge who concurred in the five-judge majority also seemingly asks for

guidance from this Court on the issue of the ambit and scope of *McCoy*: “[n]evertheless, I would leave it to the higher court to address that possible inconsistency [between King’s former claims under ineffective assistance of counsel and the factual differences between King’s case and *McCoy*] in this case rather than wait years for clarification.” *Id.* (Newell, J concurring at *3).

There is abundant evidence of Mr. King’s innocence, an issue that is still unresolved. For instance, co-defendant Russell Brewer has admitted that King was not involved in the crime in his lengthy statement “Coup de Grace” [ROA.4766-4805] written shortly before his execution in 2011. Brewer states that King was not present when Byrd was murdered; that Shawn Berry was using steroids and was supplied with them by the victim, the motivating factor for the murder; and that at his trial, Brewer was pressured by his attorneys into substituting John King for Lewis Berry as being at the scene of the crime. [*Id.*]. There is also evidence that the main piece of forensic evidence against King, sandals with the victim’s blood on them, did not belong to Mr. King but to his roommate.⁶ Mr. King’s attorneys failed to explain that on the night of the murder, other people had access to Mr. King’s “Possum” lighter found at the scene of the crime;⁷ failed to point out obvious inconsistencies in the

⁶ FBI agent Tim Brewer testified that King’s shoe size was nine and a half and Shawn Berry’s was a size nine. [ROA.8527, 8543]. Brewer was a size seven. [ROA.8528]. Lewis Berry was a size ten. [ROA.8540, 8547]. Agent Brewer testified that the sandals that had blood on them, State’s Exhibit 45, were size ten sandals. [ROA.8477].

⁷ Keisha Adkins McNeely states in an affidavit that on the night of the murder “Shawn Berry, Russell Brewer, Bill and I were standing at the bar and someone had the lighter. I didn’t see Bill with the lighter...The lighter was readily available to anyone in the apartment who wanted to pick it up.” [ROA.1447]. Brewer confirms that he, not King, actually had possession of the lighter

State's theory of the case and logical gaps in their reasoning; and failed to present evidence that Mr. King planned to re-locate to Georgia, which would have negated his alleged motive for the crime, to start a race-hate group in Jasper, Texas.⁸

Mr. King has not had an evidentiary hearing on this or any claim. *See Frank v. Mangum*, 237 U.S. 309, 326 (1915) (due process requires “a hearing, or an opportunity to be heard, before a court of competent jurisdiction, according to established modes of procedure”); *McDonald v. Missouri*, 464 U.S. 1305, 1306-1307 (1984) (Blackmun, J., in chambers) (stating that any person with a right to review, “no matter how heinous his offense may appear to be, is entitled to have that review before paying the ultimate penalty.)

A stay of execution will give this Court the opportunity to examine the record and rule on the application of *McCoy* to Mr. King's case without the time-pressure of an impending execution. Given the serious concerns raised in the dissent, a stay is warranted here.

on the night of the murder in his statement. [ROA.11215].

⁸ Probation documents un-presented at trial indicated three different requests for a transfer of King's probation to Georgia. [ROA.4095-4097]. A January 30, 1998, a “Placement Request” was submitted to transfer King's probation to his new “proposed residence” in Duluth, Georgia to be with his natural father [ROA.4095]; a February 2, 1998 formal request for a transfer of probation to Georgia [ROA.4096]; and a March 2, 1998 request, a mere three months before the murder. [ROA.4097].

PRAYER FOR RELIEF

For the reasons above and for those stated in his petition for writ of habeas corpus, Mr. King respectfully requests that this Court:

1. Grant a stay of execution , currently scheduled for April 24, 2019.
2. Grant his petition for writ of certiorari, and set the matter for further briefing and argument.
3. Mr. King further requests any other relief that law or justice may require.

Dated: April 23, 2019.

Respectfully submitted,

s/s A. Richard Ellis

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CERTIFICATE OF SERVICE

I, the undersigned, declare and certify that on April 23, 2019, I have served electronically a true and correct copy of the foregoing “Application For Stay of Execution” upon opposing counsel, Anne Pickle, Criminal District Attorney, Jasper County, Texas, 121 N. Austin, Rm. 101, Jasper, Texas 75951 (anne.pickle@co.jasper.tx.us) and Sue Korieth, Special Prosecutor for the Jasper Co. D.A.’s office, P.O. Box 600103, Dallas, Texas 75360-0103 (suekorieth@aol.com); and Ms. Katherine D. Hayes, Office of the Attorney General for the State of Texas, P.O. Box 12548, Capitol Station, Austin, TX 78711-2548 (katherine.hayes@oag.texas.gov).

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

/s/ A. Richard Ellis

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75 Magee Avenue
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Attorney for Petitioner

APPENDIX

Cause No. 8869

STATE OF TEXAS

v.

JOHN WILLIAM KING

§
§
§
§
§

IN THE 1ST DISTRICT COURT

OF

JASPER COUNTY, TEXAS

MOTION REQUESTING EXECUTION DATE

The State of Texas, by and through the undersigned Criminal District Attorney, respectfully requests the setting of an execution date for John William King, convicted of capital murder in the above-styled cause. *See* Tex. Code Crim. Proc. art. 43.141.

On February 25, 1999, the defendant, John William King, was sentenced to death after being convicted of capital murder in cause number 8869 in the 1st District Court of Jasper County, Texas.

On October 18, 2000, the Court of Criminal Appeals affirmed King's conviction. *King v. State*, 29 S.W.3d 556 (Tex. Crim. App. 2000). King did not file a petition for a writ of certiorari at that time.

King's initial state habeas application was denied by the Court of Criminal Appeals on June 20, 2001. *Ex parte King*, No. WR-49,391-01 (Tex. Crim. App. June 20, 2001). A subsequent state habeas application was dismissed by the Court of Criminal Appeals on September 12, 2012. *Ex parte King*, No. WR-49,391-02, 2012 Tex. Crim. App. Unpub. LEXIS 900, 2012 WL 3996836 (Tex. Crim. App. Sept. 12, 2012) (per curiam)(not designated for publication).

King's federal habeas application was denied by the United State District Court for the Eastern District of Texas on June 23, 2016. *King v. Dir., Tex. Dep't of Crim. Justice—Corr. Insts. Div.*, 2016 U.S. Dist. LEXIS 82295 (E.D. Tex., June 23, 2016). A certificate of appealability was granted in part by the Fifth Circuit Court of Appeals on August 8, 2017. *King v. Davis*, 703 Fed. App'x 320 (5th Cir. Tex, 2017)(per curiam). The Fifth Circuit affirmed the denial of King's federal writ of habeas corpus on February 22, 2018. *King v. Davis*, 883 F.3d 577 (5th Cir. Tex. 2018). King's petition for writ of certiorari was denied by the Supreme Court of the United States on October 29, 2018. *King v. Davis*, 2018 U.S. LEXIS 6479, 2018 WL 3146784 (U.S., Oct. 29, 2018).

Thus, an execution date may be set. *See* Tex. Code Crim. Proc. art. 43.141(a).

The State, therefore, respectfully requests that the Court schedule King's execution for April 24, 2019. The State has attached a proposed order and a proposed death warrant for the convenience of the Court and District Clerk.

Cause No. 8869

STATE OF TEXAS

v.

JOHN WILLIAM KING

§
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IN THE 1ST DISTRICT COURT

OF

JASPER COUNTY, TEXAS

EXECUTION ORDER

You, JOHN WILLIAM KING, were indicted by the Grand Jury of Jasper County, Texas, and charged with the offense of capital murder in cause number 8869. On February 23, 1999, a jury in this Court returned a verdict finding you guilty of the offense of capital murder. On February 25, 1999, the same jury in this Court returned answers to the special issues, submitted to the jury at punishment pursuant to Article 37.071 of the Texas Code of Criminal Procedure, and this Court, in accordance with the jury's findings at punishment, assessed your punishment at death. The judgment of this Court was reviewed by the Texas Court of Criminal Appeals on direct appeal and it was affirmed by that court on October 18, 2000, with mandate issued on November 13, 2000. The Texas Court of Criminal Appeals denied your initial application for writ of habeas corpus in cause number WR-43,391-01 on June 20, 2001. The Texas Court of Criminal Appeals dismissed your subsequent application for writ of habeas corpus in cause number WR-49,391-02 on September 12, 2012. Thereafter, the District Court for the Eastern District of Texas, Beaumont Division, denied your federal petition for writ of habeas corpus on June 23, 2016. The Fifth Circuit Court of Appeals granted your application for a Certificate of Appealability, in part, on August 8, 2017, then affirmed the denial of your federal writ of habeas corpus on February 22, 2018. Finally, the United States Supreme Court denied your petition for writ of certiorari on October 29, 2018. This Court now proceeds with the judgment and sentence in your case and now enters the following order.

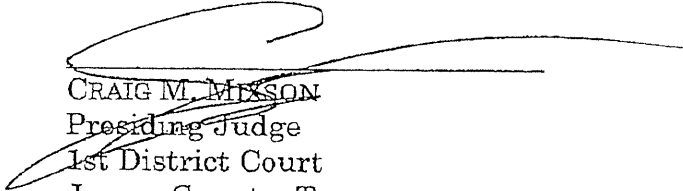
IT IS HEREBY ORDERED by this Court that you, JOHN WILLIAM KING, having been adjudged guilty of capital murder and having been assessed punishment at death, in accordance with the findings of the jury and the judgment of this Court, shall at some time after the hour of 6:00 p.m. on the 24th day of April, 2019, be put to death by an executioner designated by the Director of the Correctional Institutions Division of the Texas Department of Criminal Justice, who shall cause a substance or substances in a lethal quantity to be intravenously injected into your body sufficient to cause your death and until your death, such execution procedure to be determined and supervised by the said Director of the Correctional Institutions Division of the Texas Department of Criminal Justice.

It is ORDERED that the Clerk of this Court shall issue a death warrant, in accordance with this sentence, to the Director of the Correctional Institutions Division of the Texas Department of Criminal Justice, and shall deliver such

warrant to the Sheriff of Jasper County, Texas to be delivered by him to the Director of the Correctional Institutions Division of the Texas Department of Criminal Justice together with the defendant, JOHN WILLIAM KING, if not previously delivered.

The Defendant, JOHN WILLIAM KING, is hereby remanded to the custody of the Sheriff of Jasper County, Texas, to await transfer to Huntsville, Texas, if not previously delivered, and the execution of this sentence of death.

DONE AND ENTERED this 21st day of December, 2018.


CRAIG M. MIXSON
Presiding Judge
1st District Court
Jasper County, Texas

I CERTIFY THIS AS A TRUE COPY
WITNESS MY HAND AND SEAL OF OFFICE

DEC 21 2018

KATHY HUNT, DISTRICT CLERK
JASPER COUNTY, TEXAS
BY _____ DEPUTY

2018 DEC 21 PM 2:05
Kathy Hunt
DISTRICT CLERK
JASPER COUNTY, TEXAS

I CERTIFY THIS AS A TRUE COPY
WITNESS MY HAND AND SEAL OF OFFICE

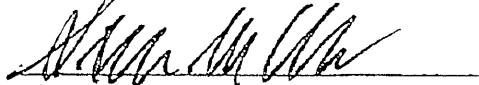
DEC 21 2018

KATHY KENT, DISTRICT CLERK
JASPER COUNTY, TEXAS

BY _____ DEPUTY

Respectfully submitted,

STEVEN M. HOLLIS
Criminal District Attorney
Jasper County, Texas



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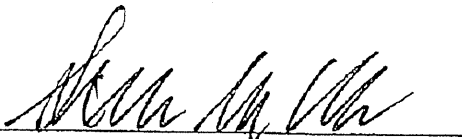
CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing pleading was served by placing same in the United States mail, postage prepaid, on this the 21 day of December, 2018, addressed and electronically sent to:

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STEVEN M. HOLLIS
Criminal District Attorney
Jasper County, Texas

COPY**DEATH WARRANT**

Cause No. 8869

STATE OF TEXAS

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IN THE 1ST DISTRICT COURT

v.

OF

JOHN WILLIAM KING

JASPER COUNTY, TEXAS

TO THE DIRECTOR OF THE CORRECTIONAL INSTITUTIONS DIVISION OF THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE AND TO THE SHERIFF OF JASPER COUNTY, TEXAS:

On the 23rd day of February, 1999, the above-named defendant, in the above-styled and numbered cause, was convicted of the offense of capital murder. On the 25th day of February, 1999, the Court sentenced the above-named defendant to death in accordance with the findings of the jury, pursuant to the Texas Code of Criminal Procedure.

The Court, having received the Court of Criminal Appeals' mandate affirming the above-named defendant's conviction for capital murder; notice of the Court of Criminal Appeals' denial of the defendant's initial application for writ of habeas corpus; notice of the Court of Criminal Appeals' dismissal of the defendant's subsequent writ of habeas corpus; notice of the District Court for the Eastern District of Texas' denial of the defendant's federal writ of habeas corpus; notice of the Fifth Circuit Court of Appeals' affirmation of the denial of the defendant's federal writ of habeas corpus; and notice of the United States Supreme Court's denial of the defendant's petition for writ of certiorari; sentenced the above-named defendant to death for the offense of capital murder and ORDERS that the execution be had on Wednesday, the 24th day of April, 2019, at any time after the hour of 6:00 p.m. at the Correctional Institutions Division of the Texas Department of Criminal Justice at Huntsville, Texas.

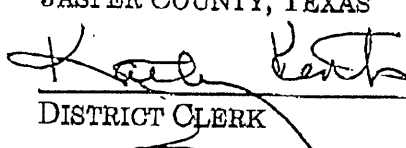
The Sheriff of Jasper County, Texas, is hereby commanded to transport the defendant to the Correctional Institutions Division of the Texas Department of Criminal Justice and deliver the defendant, if not previously delivered, and this warrant to the Director of the Correctional Institutions Division of the Texas Department of Criminal Justice for the purpose of executing this warrant, and to take from the Director the proper receipt for the defendant, if not previously delivered, and the sheriff will return the receipt to the office of the District Clerk of Jasper County, Texas.

The Director of the Correctional Institutions Division of the Texas Department of Criminal Justice is hereby commanded to receive from the Sheriff

the defendant, if not previously delivered, and this warrant, and to give his receipt to the Sheriff, and to safely keep the defendant and to execute the sentence of death at any time after the hour of 6:00 p.m. on the day and date specified in paragraph two of this warrant, by causing a substance or substances in a lethal quantity to be intravenously injected into the body of the defendant sufficient to cause death, and the injection of the substance or substances into the body of the defendant to continue until the defendant is deceased, obeying all laws of the State of Texas with reference to such execution.

Witness my hand and seal of the 1st District Court of Jasper County, Texas, at my office in the City of Jasper, Texas, on the 21st day of December, 2018.

KATHY KENT, DISTRICT CLERK
JASPER COUNTY, TEXAS


DISTRICT CLERK

RETURN

The Sheriff of Jasper County, Texas, received this writ on the _____ day of _____, 20____, at _____ M. and executed the same by delivering the within-named defendant, if not previously delivered, in person and this warrant to the Director of the Correctional Institutions Division of the Texas Department of Criminal Justice on the _____ day of _____, 20____, and by taking his receipts for the said defendant, if not previously delivered, and this warrant, which receipts are hereto attached do here now make my return on this writ this day _____ of _____, 20____.

MITCHELL NEWMAN, SHERIFF
JASPER COUNTY, TEXAS

DEPUTY

On this the _____ day of _____, 20____, the following papers related to cause number 8869, styled THE STATE OF TEXAS v. JOHN WILLIAM KING, were received from the Sheriff of Jasper County, Texas.

1. One original of DEATH WARRANT to be delivered to the Director of the Correctional Institutions Division of the Texas Department of Criminal Justice.
2. One certified Execution Order.

SIGNATURE OF TDCJ OFFICIAL