

No. _____

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

SCOTTY GARNELL MORROW,

Petitioner,

-v.-

BENJAMIN FORD,
Georgia Diagnostic Prison,

Respondent.

On Petition for Writ of *Certiorari*
to the Supreme Court of Georgia

**CAPITAL CASE: EXECUTION SCHEDULED
FOR 7:00 P.M. TODAY, MAY 2, 2019**

TO: THE HONORABLE CLARENCE THOMAS, ASSOCIATE
JUSTICE, SUPREME COURT OF THE UNITED STATES

Petitioner SCOTTY GARNELL MORROW, a death-sentenced prisoner in the State of Georgia, requests that this Court stay his execution, currently scheduled for 7:00 p.m. tonight, Thursday, May 2, 2019, until further Order of this Court, in order to permit the consideration and disposition of this petition.

PROPOSED QUESTIONS PRESENTED

1. Does a death sentence imposed by a judge who made fact-findings not made unanimously by the jury who recommended a death sentence comport with *Hurst* and *Ring*?
2. Do the Eighth and Fourteenth Amendments require a unanimous jury determination in order to impose a death sentence?

JURISDICTION

Mr. Morrow invokes this Court's jurisdiction to stay his execution under 28 U.S.C. § 1257 and Rule 23 of the Rules of the Supreme Court of the United States, pending the filing and disposition of a petition for writ of *certiorari* to the Supreme Court of Georgia.

PROCEDURAL HISTORY

Mr. Morrow was convicted of two counts of malice murder and related offenses in the Superior Court of Hall County, Georgia on June 26, 1999. Following the sentencing phase, the jury entered a verdict form that did not make the findings necessary for a legal sentence of death. After dismissing the jurors, the trial court independently amended the jury verdict to consist of a single murder conviction, upon which it then imposed a new death sentence.

Mr. Morrow's conviction and death sentence were affirmed by the

Supreme Court of Georgia on direct review, *Morrow v. State*, 532 S.E.2d 78 (Ga. 2000), and this Court denied certiorari, *Morrow v. Georgia*, 532 U.S. 944 (2001).

Mr. Morrow then filed a petition for writ of habeas corpus in the Superior Court of Butts County. The state habeas court held an evidentiary hearing on April 25-26, 2005, and subsequently entered an order granting relief, finding that Mr. Morrow's trial counsel rendered ineffective assistance at the sentencing phase of his trial by failing to adequately investigate and present mitigating evidence and failing to utilize an independent crime scene analyst to support Mr. Morrow's testimony. On appeal and cross-appeal of the state habeas court's determination, the Supreme Court of Georgia reversed the grant of sentencing phase relief. *Humphrey v. Morrow*, 717 S.E.2d 168 (Ga. 2011). This Court denied Mr. Morrow's petition for certiorari. *Morrow v. Humphrey*, 132 S. Ct. 1972 (2012).

Mr. Morrow then filed a petition for federal habeas corpus relief in the United States District Court for the Northern District of Georgia pursuant to 28 U.S.C. § 2254. The federal habeas court denied relief on each of Mr. Morrow's claims on July 28, 2016. Mr. Morrow timely

appealed, and the Eleventh Circuit Court of Appeals affirmed the denial of relief on March 27, 2018. *Morrow v. Warden, Georgia Diagnostic Prison*, 886 F.3d 1138 (11th Cir. 2018). This Court denied Mr. Morrow’s petition for certiorari on February 19, 2019. *Morrow v. Ford*, 586 U.S. ___, 139 S.Ct. 1168 (2019).

On April 12, 2019, the Superior Court of Hall County entered an order authorizing Mr. Morrow’s execution between 12:00 p.m. on May 2, 2019, and 12:00 p.m. on May 9, 2019. The Department of Corrections scheduled Mr. Morrow’s execution for 7:00 p.m. today, May 2, 2019.

On April 29, 2019, Petitioner filed a petition for writ of habeas corpus in the Superior Court of Butts County, Georgia. That court denied the petition on May 1, 2019. The Georgia Supreme Court denied Petitioner’s application for certificate of probable cause to appeal that denial on May 2, 2019.

REASONS FOR GRANTING A STAY

In order to receive a stay of execution, a petitioner must show: 1) irreparable injury if no stay is granted; 2) a “reasonable probability that four (4) members of the Court will consider the issue [presented] sufficiently meritorious to grant certiorari,” *Graves v. Burnes*, 405 U.S.

1201 (1972) (Powell, Circuit Justice), or a reasonable probability that a plurality of the Court would grant relief on an original habeas petition; and 3) a likelihood of success on the merits. *See Barefoot v. Estelle*, 463 U.S. 880, 893 (1983); *see also Fare v. Michael C.*, 439 U.S. 1310 (1978) (REHNQUIST, Circuit Justice). Mr. Morrow respectfully submits that he meets this standard.

A. Irreparable Injury

If this Court does not grant a stay, Mr. Morrow will be executed at 7:00 p.m. tonight. This clearly constitutes irreparable injury. *See, e.g., Evans v. Bennett*, 440 U.S. 1301, 1306 (1979) (REHNQUIST, Circuit Justice) (granting a stay of execution and noting the “obvious irreversible nature of the death penalty”); *O’Bryan v. Estelle*, 691 F.2d 706, 708 (5th Cir. 1982) (the “irreversible nature of the death penalty” constitutes irreparable injury and weighs heavily in favor of granting a stay).

Further, Mr. Morrow’s claims address whether the Sixth, Eighth, and Fourteenth Amendments permit his execution. The potential injury is not only his death, but a death that does not comport with those provisions, which hold that a death sentence is unconstitutional

unless a jury, and not a judge, has found each of the facts required for its imposition. Given these concerns, a stay of execution will not prejudice the State.

B. Probability That The Court Will Grant The Writ, and Likelihood of Success

The facts in Mr. Morrow’s case present troubling and substantial constitutional issues. There is a reasonable likelihood that this Court would grant *certiorari*, and that he would ultimately prevail on the merits of his claim.

In his petition for a writ of *certiorari*, Mr. Morrow has detailed how his execution will violate his constitutional rights. If “the petition demonstrates a likelihood of success in at least some respects,” a court should grant a stay. *Bundy v. Wainwright*, 808 F.2d 1410, 1421 (11th Cir. 1987). Mr. Morrow’s case involves issues that “are debatable among jurists of reason”; which “a court could resolve in a different manner”; and which involve “questions [that] are ‘adequate to deserve encouragement to proceed further.’” *Barefoot v. Estelle*, 463 U.S. 880, 893 n. 4. (1983) (citations omitted).

CONCLUSION

Wherefore, Mr. Morrow respectfully requests an Order staying his execution pending consideration of his petition for writ of *certiorari* to the Supreme Court of Georgia.

Dated, this the 2nd day of May, 2019.

Respectfully submitted,

/s/ S. Jill Benton

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