DOCKET NO. 18-9358 & 18A1202

CAPITAL CASE

IN THE UNITED STATES SUPREME COURT

ROBERT JOE LONG,

***Petitioner*,**

vs.

STATE OF FLORIDA,

***Respondent*.**

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF FLORIDA

EXECUTION SCHEDULED
May 23, 2019

RESPONDENT'S BRIEF IN OPPOSITION AND RESPONSE IN OPPOSITION TO APPLICATION FOR STAY OF EXECUTION

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QUESTIONS PRESENTED FOR REVIEW

[Capital Case]

Question I

Whether this Court should grant certiorari to review the Florida Supreme Court's rejection of Petitioner's challenge to the Florida Department of Corrections' execution-witness policies when the decision is based on state law and does not conflict with this Court's precedent?

Question II

Whether this Court should grant certiorari review where the retroactive application of Hurst v. Florida, 136 S. Ct. 616 (2016), and Hurst v. State, 202 So. 3d 40 (Fla. 2016), is based on adequate independent state grounds, and this very issue has previously been rejected by the Florida Supreme Court and this Court?

Question III

Whether this Court should grant certiorari to review the Florida Supreme Court's rejection of Petitioner's public records claim that was denied based on adequate independent state law, and whether this Court should grant certiorari review on Petitioner's Eighth Amendment claim that is consistent with this Court's precedent in Glossip v. Gross, 135 S. Ct. 2726 (2016), and Baze v. Rees, 553 U.S. 35 (2008)?

Question IV

Whether this Court should grant certiorari review of Petitioner's claim that, after spending thirty years on death row, his execution would constitute cruel and unusual punishment?

TABLE OF CONTENTS

TABLE OF CITATIONS

Cases

Other Authorities

CITATION TO OPINION BELOW

The decision of the Florida Supreme Court is reported at Long v. State, Case No. SC19-726, 2019 WL 2150942 (Fla. May 17, 2019).

STATEMENT OF JURISDICTION

Petitioner asserts that this Court's jurisdiction is based upon 28 U.S.C. § 1257. Respondent agrees that the statutory provision sets out the scope of this Court's certiorari jurisdiction. However, this case is inappropriate for the exercise of this Court's discretionary jurisdiction because the Florida Supreme Court's decision does not implicate an important or unsettled question of federal law, nor does it conflict with another state court of last resort, a United States court of appeals, or any relevant decisions of this Court. Sup. Ct. R. 10. Additionally, some parts of the Florida Supreme Court's opinion are based on adequate and independent state grounds.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Respondent accepts Petitioner's statement regarding the applicable constitutional and statutory provisions involved.

STATEMENT OF THE CASE AND FACTS

Petitioner, Robert Joe Long, is in custody of the Florida Department of Corrections and under a lawful sentence of death. On September 23, 1985, Appellant, Robert Joe Long, entered into a plea agreement with the State and pleaded guilty to the first-degree murder of Michelle Simms, along with seven additional counts of first-degree murder, numerous sexual battery and kidnapping counts, and a violation of probation. Following a penalty phase in July 1986, Long was sentenced to death for the murder of Michelle Simms. On direct appeal, the Florida Supreme Court affirmed the convictions and all sentences except for the death sentence, which the court vacated and remanded for a new sentencing proceeding. Long v. State, 529 So. 2d 286 (Fla. 1988).

Long unsuccessfully sought to withdraw his guilty plea prior to the resentencing proceeding in 1989. Thereafter, a unanimous jury recommended the death penalty and the trial court followed the recommendation and imposed a death sentence. The Florida Supreme Court affirmed Long's death sentence on appeal. Long v. State, 610 So. 2d 1268 (Fla. 1992), cert. denied, 510 U.S. 832 (1993).

Long filed his initial postconviction motion in state circuit court in 1994, and following a 2003 amendment, the court

conducted an evidentiary hearing. On November 28, 2011, the circuit court denied Long's motion. The Florida Supreme Court affirmed this ruling on appeal. Long v. State, 118 So. 3d 798 (Fla. 2013).

Following his state court proceedings, Long sought relief by filing a petition for writ of habeas corpus in federal court. The United States District Court, Middle District of Florida, denied Long's habeas petition on August 30, 2016, and the Eleventh Circuit Court of Appeals denied a certificate of appealability on January 4, 2017.

On September 9, 2014, during the pendency of his federal habeas proceedings, Long again returned to the state circuit court and filed a successive postconviction motion based on alleged newly discovered evidence, which the court summarily denied. This ruling was affirmed by the Florida Supreme Court. Long v. State, 183 So. 3d 342 (Fla. 2016).

On January 3, 2017, Long filed a second successive motion for postconviction relief raising claims for relief pursuant to Hurst v. Florida, 136 S. Ct. 616 (2016), and Hurst v. State, 202 So. 3d 40 (Fla. 2016), cert. denied, 137 S. Ct. 2161 (2017). The circuit court summarily denied Long's motion and Long appealed. The Florida Supreme Court affirmed the summary denial of relief, finding that Hurst did not apply retroactively to Long's

sentence of death that became final in 1993. Long v. State, 235 So. 3d 293 (Fla.), cert. denied, 139 S. Ct. 162 (2018).

On April 23, 2019, Governor Ron DeSantis signed Long's death warrant, and his execution is scheduled for May 23, 2019, at 6:00 p.m. On April 29, 2019, Long filed his *third* successive motion for postconviction relief raising six claims. After reviewing the State's response and conducting a case management conference, the postconviction court summarily denied all of Long's claims with the exception of Claim 2(a); Long's as-applied challenge to Florida's lethal injection protocol.

On May 3, 2019, the court conducted an evidentiary hearing on Long's as-applied challenge. Long presented testimony from Dr. Lubarsky, Anesthesiologist; Dr. Frank Wood, Neuropsychologist; Silas Raymond, Clinical and Compounding Pharmacist; and Steven Whitfield, Chief of Pharmaceutical Services at the Florida Department of Corrections (FDOC). The State presented rebuttal testimony of Dr. Steven Yun, Clinical Anesthesiologist, and Dr. Daniel Buffington, Doctor of Pharmacy/Pharmacologist. Following the evidentiary hearing, the court entered an order May 6, 2019, denying relief on all of Long's claims.

Long then appealed to the Florida Supreme Court. He also filed a state habeas petition in the Florida Supreme Court. On

May 10, 2019, the Florida Supreme Court dismissed Long's habeas petition based on it being untimely and procedurally barred under applicable state law. Subsequently, on May 17, 2019, the Florida Supreme Court issued an opinion affirming the postconviction court's denial of postconviction relief. Long v. State, Case No. SC19-726, 2019 WL 2150942 (Fla. May 17, 2019).

On May 20, 2019, Long filed a petition for writ of certiorari in this Court from the Florida Supreme Court's opinion affirming the postconviction court's denial of his third successive postconviction motion. This is the State's brief in opposition.

REASONS FOR DENYING THE WRIT

QUESTION I

THE FLORIDA SUPREME COURT CORRECTLY DETERMINED THAT PETITIONER WAS NOT ENTITLED TO RELIEF ON HIS CHALLENGE TO THE FLORIDA DEPARTMENT OF CORRECTIONS' POLICIES, AND THE COURT'S DECISION WAS BASED ON STATE LAW AND LONG'S FAILURE TO PROVE THAT THE CHALLENGED POLICIES VIOLATED HIS CONSTITUTIONAL RIGHTS.

Petitioner seeks review of the Florida Supreme Court's denial of his challenges to the Florida Department of Corrections' policies of disallowing him multiple witnesses to observe his execution, having access to a telephone, and observing the IV insertion process. This Court should deny certiorari review because (1) this claim was decided on the basis of state law, (2) part of Petitioner's claim was never presented to, and considered by, the Florida Supreme Court, (3) Petitioner's number-of-execution witnesses claim is now moot, and (4) there is no split of authority or conflict with this Court's precedent, and the Department of Corrections' policies do not violate any of Long's constitutional rights.

Petitioner's claim specifically challenges the Florida Department of Corrections' policies limiting the number of people who can view an execution, what is permitted inside the execution room, and what part of the procedure the witnesses are able to observe. With regard to the number of people permitted to view an execution, Florida law provides the warden of the

prison with discretion to choose the execution witnesses. § 922.11(2) Fla. Stat. (2018). The statute provides that "[c]ounsel for the convicted person and ministers of religion requested by the convicted person may be present." § 922.11(2) Fla. Stat. (2018). The Department of Corrections allows one attorney to be present and one minister of religion to be present, if requested by the inmate. There is no provision that allows the inmate to swap a minister of religion for a different witness of the inmate's choosing. If the minister of religion is not present, any other witness would fall within the discretion of the warden's choosing, and the warden has discretion to choose twelve citizens to witness the execution.[1] § 922.11(2), Fla. Stat. (2018).

As Petitioner recognized in state court, Florida's Department of Corrections has consistently and routinely denied requests for attorneys to be provided telephones within the execution room. The Department of Corrections does not permit any phones within the execution viewing room. Additionally, Florida's lethal-injection protocol does not provide for witnesses to watch the insertion of the intravenous lines. In denying this claim, the Florida Supreme Court acknowledged that

[1] Given that Long is a serial killer and serial rapist, it is unsurprising that there is currently a waiting list for victims' family members wanting to attend Long's execution.

state law affords the Department of Corrections a presumption that it will properly perform its duties while carrying out an execution. Long v. State, SC19-726, 2019 WL 2150942, at *5 (Fla. May 17, 2019). It also recognized that both the Florida Constitution and Florida case law prohibit the court from micromanaging the executive branch in fulfilling its duties relating to executions. Id. The Florida Supreme Court's decision about whether to intervene on matters reserved for the executive function of the Department of Corrections is a matter of state law; this Court should not exercise its judicial discretion in granting review.

Next, certiorari review should be denied because this Court's jurisdiction is limited to only those federal constitutional issues that were properly presented and considered by the court below. Illinois v. Gates, 462 U.S. 213, 217-19 (1983); Webb v. Webb, 451 U.S. 493, 496-97 (1981); Adams v. Robertson, 520 U.S. 83, 86-87 (1997). Long's briefing in the Florida Supreme Court only alleged a Sixth and Eighth Amendment violation with regard to this claim. However, in his petition for writ of certiorari, Long alleges that the Florida Department of Corrections' restrictions constitute a violation of his First,[2] Sixth, Eighth, and Fourteenth Amendment rights. Because

[2] Long's brief did mention access to courts; however, a freedom

Long has now expanded his argument, the specific issue that Long now raises in his petition for writ of certiorari was not properly presented to the Florida Supreme Court below. On this basis, certiorari review should be denied. Id.

Denial is also appropriate because Petitioner's challenge concerning the number of witnesses permitted in the execution room is now moot. Long's petition for writ of certiorari alleges that he does not want a minister of religion present. He argues that he is given the option to have a minister of religion present under state law, and because he does not want to have one, it is unconstitutional to prevent him from having another lawyer take the minister's place. Notably, Long's entire argument is premised on this idea that he wants to substitute his minister of religion for a second attorney. However, Long has actually requested that a minister of religion be present, and his request has been granted.[3] See Respondent's Appendix A. Therefore, his entire argument on this point is moot.

In addition, certiorari review should not be granted because the Florida Supreme Court's ruling does not conflict

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of religion or Establishment Clause argument was never made.

[3] The State previously pointed this out on May 17, 2019, in its response to Long's emergency motion to stay his execution filed in the United States District Court, Middle District of Florida. The State's response addressing this point was filed three days prior to Long filing his petition for writ of certiorari in this Court, which re-raises this moot point.

with this Court's precedent, and the Florida Department of Corrections' policies do not violate any of Petitioner's constitutional rights. Long's attempt to compare his case to Dunn v. Ray, 139 S. Ct. 661 (2019), and Murphy v. Collier, Case No. 18A985, 2019 WL 2078111 (Mar. 28, 2019), is misguided.

Murphy v. Collier involves a Texas policy that allowed a Christian or Muslim inmate to have a Christian or Muslim religious adviser present *either* in the execution room *or* in the adjacent viewing room. Murphy v. Collier, Case No. 18A985, 2019 WL 2078111, at *1 (Mar. 28, 2019). However, inmates of other denominations, like Murphy-a Buddhist, could only have their religious advisors present in the execution viewing room. Id. Long has no such limitation based on the denomination of his minister of religion that restricts where his minister can be present.

Similarly, Dunn v. Ray, 139 S. Ct. 661 (2019), addresses an Alabama policy that allowed a Christian chaplain to be present in the execution chamber, but did not allow ministers of other religions to be present. Ray is Muslim, and his request to have an inmam present at his execution was denied. Id. at 662. Here, Long is not claiming that he is restricted from having a minister of his faith. As previously mentioned, Long's request to have his minister present was granted. Long has not presented

any valid First Amendment challenge, nor has he shown that the restriction on the number of attorneys he is allowed to have present violates any of his other constitutional rights.

Long has not cited to any authority suggesting that the Florida Department of Corrections' policy of allowing him to have one attorney present, and not permitting his attorney to have access to a phone or to view the IV insertion process violates his constitutional rights. As this Court has recognized, it is not the role of the court to become "boards of inquiry charged with determining 'best practices' for executions. Baze v. Rees, 553 U.S. 35, 51 (2008). For all these reasons, certiorari review should be denied.

QUESTION II

THE FLORIDA SUPREME COURT CORRECTLY DETERMINED THAT, AS A MATTER OF STATE LAW, PETITIONER WAS NOT ENTITLED TO RELIEF PURSUANT TO HURST V. STATE.

Petitioner argues that Florida's retroactive application of Hurst v. Florida, 136 S. Ct. 616 (2016), violates the Eighth and Fourteenth Amendments. Certiorari review should be denied because the issue below was decided on the basis of state law, and this case does not present a fairly debatable or important unsettled question of constitutional law for this Court's review See Sup. Ct. Rule 10; Rockford Life Ins. Co. v. Illinois Dept. of Revenue, 482 U.S. 182, 184, n.3 (1987). Petitioner's Hurst

argument was originally raised in his second successive motion for postconviction relief in the state circuit court. The state circuit court denied relief, and the Florida Supreme Court affirmed the denial of relief. Long v. State, 235 So. 3d 293, 294 (Fla. 2018). The Florida Supreme Court held that Long's sentence of death became final in 1993, and therefore, Hurst does not apply retroactively to Long's sentence of death. Id. at 294. This Court denied certiorari review of the Florida Supreme Court's opinion. Long v. Florida, 139 S. Ct. 162 (2018). Now, Petitioner has raised the same argument again in his third successive motion for postconviction relief. The state courts found this claim untimely, successive, and procedurally barred under state law grounds.

This Court has repeatedly recognized that where a state court judgment rests on non-federal grounds, where the non-federal grounds are an adequate basis for the ruling independent of the federal grounds, "our jurisdiction fails." Fox Film Corp. v. Muller, 296 U.S. 207, 210 (1935); Coleman v. Thompson, 501 U.S. 722, 729 (1991); Michigan v. Long, 463 U.S. 1032, 1038, 1041-42 (1983); see also Cardinale v. Louisiana, 394 U.S. 437, 438 (1969) (reaffirming that this Court has no jurisdiction to review a state court decision on certiorari review unless a federal question was raised and decided in the state court

below). If a state court's decision is based on separate state law, this Court "of course, will not undertake to review the decision." Florida v. Powell, 559 U.S. 50, 57 (2010). In this case, the claim presented was rejected in state court based upon well-settled state procedural rules. Because the Florida Supreme Court's denial of this claim rests firmly on state law, this Court should deny certiorari review of Petitioner's successive Hurst claim.

QUESTION III

THE FLORIDA SUPREME COURT DENIED PETITIONER'S PUBLIC RECORDS CLAIM BASED SQUARELY ON INDEPENDENT AND ADEQUATE STATE LAW GROUNDS, AND PETITIONER'S EIGHTH AMENDMENT CLAIM DOES NOT WARRANT CERTIORARI REVIEW.

Petitioner first challenges the Florida Supreme Court's affirmance of the state circuit court's denial of his request for public records from the state's District Eight Medical Examiner, the Florida Department of Corrections, and the Florida Department of Law Enforcement. The Florida Supreme Court's ruling on Petitioner's right to records is based solely on state law, and therefore, certiorari review should be denied.

A defendant's access to public records is governed by Florida Rule of Criminal Procedure 3.852. The Florida Supreme Court's ruling was limited to whether Long was entitled to the records based on state law under the Florida Rules of Criminal

Procedure. Long v. State, SC19-726, 2019 WL 2150942, at *6-7 (Fla. May 17, 2019). The court also noted that Long's requests were overbroad and would not lead to a colorable claim, which are disqualifying factors under state law. Id. The court concluded that denying Long's requests for records was consist with state law. Id. Because the Florida Supreme Court's decision is based on adequate and independent state law grounds, this Court should not grant certiorari review.

Long essentially asks this Court to grant review of a case in which the underlying claim is nothing more than a discretionary ruling on postconviction discovery based on state law. This is not a viable constitutional claim. See District Attorney's Office for Third Judicial Dist. v. Osborne, 557 U.S. 52, 69 (2009) ("Federal courts may upset a State's postconviction relief procedures only if they are fundamentally inadequate to vindicate the substantive rights provided."). This Court has made clear that there is no constitutional right to discovery in a criminal case even at trial. Weatherford v. Bursey, 429 U.S. 545, 559-60 (1977). Further, there is no constitutional right to postconviction litigation in state court, and the Constitution did not compel the states to provide any specific type of postconviction proceeding when they elect to do so. Pennsylvania v. Finley, 481 U.S. 551 (1987). As such,

all of Petitioner's arguments about the denial of his discovery requests present only issues of state law. This Court has no jurisdiction to address the state law issue regarding the postconviction discovery requests. See Illinois v. Gates, 462 U.S. 213, 217-18 (1983). Certiorari should be denied.

Next, Petitioner challenges the state court's denial of an evidentiary hearing on his facial challenge to the use of etomidate in the state's three-drug lethal injection protocol. In his petition, Long argues that the Florida Supreme Court has determined that it "will hear only a single challenge from a single defendant to any change made in the lethal injection protocol." Petition at 32. Long is incorrect. The Florida Supreme Court fully considered the constitutionality of etomidate in Asay v. State (Asay VI), 224 So. 3d 695, 705 (Fla. 2017). Since Asay VI, no Florida defendant has raised a challenge that would warrant the court revising its prior holding. Long v. State, SC19-726, 2019 WL 2150942, at *5 (Fla. May 17, 2019).

In Long's case, he merely reargued what other death-row inmates facing execution had already unsuccessfully argued. Jimenez v. State, 265 So. 3d 462 (Fla. 2018); Hannon v. State, 228 So. 3d 505, 508-09 (Fla. 2017); Asay VI, 224 So. 3d at 701. Facial challenges to Florida's lethal injection protocol are

not automatically summarily denied, as Long contents. Rather, such claims are summarily denied, as in Long's case, when defendants do not meet their pleading requirements.

In order to successfully challenge his method of execution, Long was required to (1) establish that it presents a substantial and imminent risk that is sure or very likely to cause serious illness and needless suffering, and (2) identify a known and available alternative method of execution that entails a significantly less severe risk of pain. Asay v. State (Asay VI), 224 So. 3d 695, 701 (Fla. 2017) (citing Glossip v. Gross, 135 S. Ct. 2726, 2737 (2016)); see also Baze v. Rees, 553 U.S. 35 (2008); Bucklew v. Precythe, 139 S. Ct. 1112 (2019). Both requirements must be pled in order to have a facially sufficient claim, and Long failed to meet those requirements.

Long was not entitled to an evidentiary hearing based on his speculations regarding what allegedly happened in other executions under Florida's current three-drug protocol.[4] Long's assertions that eyes blinking or a chest rising and falling (heavy breathing) certainly do not establish a substantial risk

[4] While not specifically alleged in the petition for writ of certiorari, Long argued below that alleged eye blinking and heavy breathing of Jose Jimenez during his execution, and Eric Branch's yelling that the executioners were murderers during his execution served as a basis for Long to be granted an evidentiary hearing.

of harm under Baze or Glossip. There is nothing from any of Florida's five previous executions using etomidate to suggest that Florida's protocol involves unconstitutional pain and suffering.

Additionally, this Court should know that Long *was* granted an evidentiary hearing on his as-applied constitutional challenge to the use of etomidate in the state's three-drug protocol. Long was specifically provided an opportunity to show that etomidate presents a substantial and imminent risk that is sure or very likely to cause serious illness and needless suffering. He was also given the opportunity to identify a known and available alternative method of execution that entails a significantly less severe risk of pain. Long failed to make either of the required showings even after an evidentiary hearing was granted.

Long claimed that etomidate, the first drug in Florida's lethal injection protocol, would not induce and maintain unconsciousness throughout the execution. The State presented the testimony of Dr. Yun, a very experienced, practicing anesthesiologist, during the evidentiary hearing in state court. Dr. Yun opined that the 200 milligrams of etomidate used in Florida's lethal injection protocol would "predictably produce a very reliable deep state of unconsciousness."

Dr. Yun testified that in his best clinical estimate, a dose of 200 milligrams of etomidate would render the patient unconscious for several hours, but "at the very least for 30 minutes." Dr. Buffington testified that 60 minutes of unconsciousness would easily be achieved with the 200 milligram dose. Dr. Buffington further testified that the protocol provides for an additional 200 milligram dose of etomidate to be administered if the person does not pass the consciousness check. The state circuit court specifically found the State's experts more credible than Long's expert, Dr. Lubarsky, and the Florida Supreme Court gave deference to the circuit court's credibility findings.

Long also failed to show that his proposed alternative method of pentobarbital or fentanyl was feasible, readily available, or that either drug entailed a significantly less severe risk of pain. Long has not shown that the Florida Supreme Court's denial of his Eighth Amendment claims conflicts with the decisions of this Court. In fact, the Florida Supreme Court applied this Court's precedent in denying his Eighth Amendment claim. Long's petition presents no important or unsettled question of constitutional law that would warrant this Court's review. Instead, it merely amounts to another effort of a death-row inmate to delay his impending execution. Certiorari review

should be denied.

QUESTION IV

PETITIONER'S CLAIM THAT HIS EXECUTION VIOLATES THE EIGHTH AND FOURTEENTH AMENDMENTS BECAUSE HE SPENT THIRTY YEARS ON DEATH ROW DOES NOT WARRANT THIS COURT'S REVIEW.

Next, Petitioner argues that his execution would violate the Eighth Amendment and Fourteenth Amendments due to the length of time he has spent on death row. However, the Florida Supreme Court's denial of this claim presents no constitutional question that is in conflict with decisions from this Court or any other court. This Court has never held that a prolonged stay on death row constitutes cruel and unusual punishment. Long points to no other case in which any court has held as much.

Notably, this claim has been repeatedly rejected, and no basis for reconsideration has been offered. Knight v. Florida, 528 U.S. 990 (1999); Elledge v. Florida, 525 U.S. 944 (1998); Lackey v. Texas, 514 U.S. 1045 (1995). And while the denial of certiorari may not carry precedential value, surely the fact that this Court has repeatedly declined opportunities to address the issue further is a reflection that no constitutional violation occurs when inmates spend decades on death row. See Muhammad v. State, 132 So. 3d 176, 206-07 (Fla. 2013), cert. denied, 134 S. Ct. 894 (2014); Carroll v. State, 114 So. 3d 883, 889 (Fla.), cert. denied, 133 S. Ct. 2762 (2013); Pardo v.

State, 108 So. 3d 558, 569 (Fla.), cert. denied, 133 S. Ct. 815 (2012); Ferguson v. State, 101 So. 3d 362, 366-67 (Fla.), cert. denied, 133 S. Ct. 497 (2012); Gore v. State, 91 So. 3d 769, 780 (Fla.), cert. denied, 132 S. Ct. 1904 (2012); Valle v. State, 70 So. 3d 530, 552 (Fla.), cert. denied, 132 S. Ct. 1 (2011); Tompkins v. State, 994 So. 2d 1072, 1085 (Fla. 2008), cert. denied, 555 U.S. 1161 (2009).

Additionally, much of the delay in Long's execution is attributable to Long's own actions. Long has been engaging in collateral challenges to his death sentence since it became final in 1993 in an attempt to avoid or delay his execution. Any complaint now that the process, which he has used to his advantage to delay his execution, took too long is disingenuous. The Florida Supreme Court's denial of this claim is based on consistent state precedent. See Jimenez v. State, 265 So. 3d 462 (Fla. 2018); Branch v. State, 236 So. 3d 981 (Fla. 2018); Lambrix v. State, 217 So. 3d 977, 988 (Fla. 2017); Correll v. State, 184 So. 3d 478, 486 (Fla. 2015); Muhammad v. State, 132 So. 3d 176, 206-07 (Fla. 2013); Carroll v. State, 114 So. 3d 883, 889 (Fla. 2013); Pardo v. State, 108 So. 3d 558, 569 (Fla. 2012); Ferguson v. State, 101 So. 3d 362, 366-67 (Fla. 2012). That precedent does not conflict with any decision from this Court. This issue also does not involve an important or

unsettled question of constitutional law. Long has not established any basis for this Court to accept his petition for writ of certiorari. Accordingly, his petition for writ of certiorari should be denied.

DENIAL OF STAY

"[A] stay of execution is an equitable remedy. It is not available as a matter of right, and equity must be sensitive to the State's strong interest in enforcing its criminal judgments without undue interference from the federal courts." Hill v. McDonough, 547 U.S. 573, 583-84 (2006). "Both the State and the victims of crime have an important interest in the timely enforcement of a sentence." Bucklew v. Precythe, 139 S. Ct. 1112, 1133 (2019) (quoting Hill, 547 U.S. at 584). "Given the State's significant interest in enforcing its criminal judgments there is a strong equitable presumption against the grant of a stay where a claim could have been brought at such a time as to allow consideration of the merits without requiring entry of a stay." Nelson v. Campbell, 541 U.S. 637, 650 (2004) (internal citations omitted). Therefore, "[c]ourts should police carefully against attempts to use such [method-of-execution] challenges as tools to interpose unjustified delay." Bucklew, 139 S. Ct. at 1134.

Here, Long has not presented a colorable claim for relief

that would entitle him to a stay. As shown in the State's Brief in Opposition, none of the claims raised by Long warrant the granting of this Court's discretionary review. Under these circumstances, "equity must be sensitive to the State's strong interest in enforcing its criminal judgments without undue interference from the federal courts." Hill, 547 U.S. at 584. The State's strong interest in the timely enforcement of Long's sentence is not outweighed by the unlikely possibility that Long's petition for certiorari will be granted by this Court. The equities in this case tilt decidedly against Long in favor of the State and the many victims' family members awaiting Long's execution. Accordingly, the State respectfully requests that this Court deny the instant application for a stay of execution.

CONCLUSION

Based on the foregoing, Respondent respectfully requests that this Court deny the petition for writ of certiorari and the application for stay of execution.

Respectfully submitted,

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