DOCKET NO. 18-9396 & 18A1216

CAPITAL CASE

IN THE UNITED STATES SUPREME COURT

BOBBY JOE LONG,

***Petitioner*,**

vs.

MARK S. INCH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL.,

***Respondents*.**

COMBINED RESPONSE TO PETITION FOR WRIT OF CERTIORARI AND APPLICATION FOR STAY OF EXECUTION PENDING REVIEW OF THE ELEVENTH CIRCUIT COURT OF APPEALS' DECISION DENYING A STAY OF EXECUTION ON PETITIONER'S SECTION 1983 CLAIM

EXECUTION SCHEDULED
MAY 23, 2019 at 6:00 P.M.

COME NOW, the Respondents, Secretary, Florida Department of Corrections, et al., by and through the undersigned counsel, and move this Honorable Court to deny petition for writ of certiorari and the requested application for stay of execution. The two questions presented in Long's petition for writ of certiorari do not implicate an important or unsettled question of federal law, nor do the claims presented conflict with a decision from another United States court of appeals, or any relevant decisions of this Court. Sup. Ct. R. 10.

STATEMENT OF THE CASE AND FACTS

Over the course of 1984, Long abducted, sexually assaulted, and murdered numerous women in the Tampa Bay area. The instant death warrant case stems from Long's guilty plea to eight homicides in Hillsborough County. On September 23, 1985, Long entered into a plea agreement with the State and pleaded guilty to the murder, kidnapping, and sexual battery of Michelle Simms, along with seven additional counts of first-degree murder, numerous sexual battery and kidnapping counts, and a violation of probation. According to the plea agreement, the State would be limited to seeking the death penalty only as to the murder of Michelle Simms.[1] See Long v. State, 529 So. 2d 286, 288 (Fla. 1988).

After Long was originally sentenced to death, the Florida Supreme Court reversed his death sentence and remanded for a new penalty phase. Id. at 291-93. Following a resentencing proceeding before a jury, Long was again sentenced to death for the murder of Michelle Simms, and his sentence was affirmed on appeal. See Long v. State, 610 So. 2d 1268, 1269-71 (Fla. 1992), cert. denied, 510 U.S. 832 (1993).

Following the completion of his initial state postconviction proceedings, Long v. State, 118 So. 3d 798 (Fla.

[1] Long received concurrent life sentences in the seven other murder cases.

2013), Long sought relief in federal court by filing a petition for writ of habeas corpus in the United States District Court, Middle District of Florida. Long v. Secretary, Fla. Dep't of Corr., Case No. 8:13-cv-02069-MSS-AEP. On August 30, 2016, the district court issued an order denying Long's habeas petition. Long filed an application for a certificate of appealability (COA) in the Eleventh Circuit Court of Appeals, and on January 4, 2017, that court denied the COA.

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, pursuant to the Florida Supreme Court's scheduling order, Long filed a third successive motion for postconviction relief raising six claims, including the identical four claims raised in Long's section 1983 complaint. 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 state court conducted an evidentiary on Long's as-applied challenge to Florida's lethal injection protocol. Long presented testimony from Dr. David 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. After hearing the testimony, the state court issued a comprehensive order denying all relief. Long appealed the state court's ruling on his successive motion to the Florida Supreme Court, and on May 17, 2019, the court issued an opinion affirming the denial of relief. Long v. State, Case No. SC19-726, 2019 WL 2150942 (Fla. May 17, 2019), petition for cert. filed, (U.S. May 20, 2019) (No. 18-9358).

On May 16, 2019, Long filed a complaint pursuant to 42 U.S.C. § 1983 in the district court raising four claims: (1) that Florida's lethal injection protocol utilizing etomidate as the first drug at Long's execution would constitute cruel and unusual punishment; (2) Florida's failure to use a single-drug protocol violates the Eighth Amendment's evolving standards of decency; (3) that Florida's public records laws violated his constitutional rights; and (4) that the FDOC's refusal of his requests regarding witnesses' access during the execution violated his right to access the courts. Long simultaneously filed an emergency motion for temporary restraining order (TRO), preliminary injunction, and/or stay of execution. On May 19,

2019, the district court issued an order denying Long's motion for TRO, preliminary injunction and/or stay of execution and found that Long had not established a substantial likelihood of success on the merits of his claims because all of his claims were barred by res judicata. Long appealed the district court's denial of his motion to stay and also sought a stay of execution from the Eleventh Circuit Court of Appeals. On May 22, 2019, the Eleventh Circuit affirmed the denial of the district court's order and denied a stay of execution. Long v. Secretary, Department of Corrections, Case No. 19-11942-P, 2019 WL 2204427 (11th Cir. May 22, 2019).

REASONS WHY THE APPLICATION FOR STAY SHOULD BE DENIED

On May 23, 2019, only hours before Long's scheduled execution, Long filed with this Court a petition for writ of certiorari and motion for stay of execution. Respondents submit that Long's petition for writ of certiorari is meritless and he is not entitled to a stay of execution based on the Eleventh Circuit Court of Appeals' order denying his motion for stay. Long's entire basis for requesting this Court's interference with the orderly administration of justice in Florida is his assertion that this Court will consider the claims raised in his petition for writ of certiorari and grant him relief. However, because Long has been dilatory in presenting his claims, his

claims are barred by the doctrine of res judicata, and he has failed to establish a substantial likelihood of success on the merits of his section 1983 complaint, he is not entitled to a stay. Accordingly, this Court should deny his request for a stay.

A. Long's Dilatory Conduct Disentitles Him To A Stay

Long has spent the last thirty years unsuccessfully challenging his death sentence arising from his guilty plea to first-degree murder. See Long v. State, 610 So. 2d 1268 (Fla. 1992). With his execution looming in only a matter of hours, Long has filed a motion for stay with this Court seeking to delay his scheduled execution based on his section 1983 claims filed below that could have clearly been raised at an earlier date. Rather than filing his section 1983 action in a timely manner, Long waited until *seven* days before his scheduled execution to raise these claims in the federal court. The last-minute nature of this filing is of Long's own making, and he should not profit from his dilatory and abusive strategy.

This Court has advised that "[f]iling an action that can proceed under § 1983 does not entitle the complainant to an order staying an execution as a matter of course." 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." Id. at 584 (citing Calderon v. Thompson, 523 U.S. 538, 556 (1998)). A court considering a stay must also apply "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." Id. (citing Gomez v. United States Dist. Court, 503 U.S. 653, 654 (1992) (noting that the "last-minute nature of an application" or an applicant's "attempt at manipulation" of the judicial process may be grounds for denial of a stay")); see also Bucklew v. Precythe, 139 S. Ct. 1112, 1133-34 (2019) (stating that last minute stays should be the "extreme exception, not the norm," and federal courts can, and should, invoke their equitable powers to dismiss suits that are pursued in a dilatory fashion or based on speculative theories); Price v. Dunn, 587 U.S. ___, 2019 WL 2078104 at *4 (May 13, 2019) (Thomas, J., concurring in the denial of certiorari) (noting that seeking a stay shortly before a scheduled execution, after delaying bringing the section 1983 challenge in the first place, "only encourages the proliferation of dilatory litigation strategies that we have recently and repeatedly sought to discourage").

Here, there is no question that Long was dilatory in bringing his section 1983 complaint only seven days before his

scheduled execution. Long's lethal injection challenges are based on his allegation that his traumatic brain injury (TBI) and temporal lobe epilepsy would be contraindicated by etomidate. Long, however, has known about his medical conditions for decades. During his penalty-phase proceeding, Long presented the testimony of Dr. John Money regarding his alleged temporal lobe epilepsy, and Long also presented the testimony of Dr. Robert Berland concerning Long's alleged brain damage. Long v. State, 610 So. 2d 1268, 1271-72. The trial court actually found mitigation based on these conditions during Long's 1989 resentencing hearing. Id. Clearly, the evidence regarding these conditions is not new.

Long also challenged Florida's use of three-drug lethal injection protocol instead of a one-drug protocol, but Florida has been using a three-drug protocol since lethal injection first became a statutorily-authorized method of execution in the state. See Boyd v. Warden, Holman Corr. Facility, 856 F.3d 853, 873-74 (11th Cir. 2017), cert. denied sub nom., Boyd v. Dunn, 138 S. Ct. 1286 (2018). As the Eleventh Circuit correctly indicated, "Long had nineteen years to challenge the use of a three-drug protocol. Nineteen years is too long to wait." Long v. Secretary, Department of Corrections, No. 19-11942-P, 2019 WL 2204427 at *4 (11th Cir. May 22, 2019).

In addition, the use of etomidate in the state's three-drug protocol has been part of the protocol since January 2017. Asay v. State (Asay VI), 224 So. 3d 695, 705 (Fla. 2017). Yet Long waited until last week to file a section 1983 claim to challenge it. Given that Long has known about his medical conditions for decades, he has known about the state's three-drug protocol for nineteen years, and has known about the use of etomidate as part of the protocol for over two years, he cannot justify waiting until seven days before his scheduled execution to bring his section 1983 claim to the federal district court. Accordingly, the instant action is clearly dilatory and the equities lie decidedly in favor of the State, the murder victim's surviving family members, and the numerous other victims of Long's violent and heinous crimes.

As this Court stated in Nelson v. Campbell, 541 U.S. 637, 649-50 (2004), a stay of execution is an equitable remedy and must take into consideration the State's strong interest in proceeding with its judgment and attempts by the inmate to manipulate the proceedings. In determining whether an inmate is entitled to a stay, a court "must consider not only the likelihood of success on the merits and the relative harms to the parties, but also the extent to which the inmate has delayed unnecessarily in bringing the claim." Id.; see also Hill v.

McDonough, 547 U.S. 573, 584 (2006). Due to Long's dilatory litigation strategy in presenting his claims to the district court only a week before his scheduled execution, this Court should deny his motion for a stay of execution for this reason alone. See Gomez v. United States Dist. Court, 503 U.S. 653, 654 (1992).

B. Long has failed to carry his burden of establishing an entitlement to a stay of execution

Even if Long's claims were not barred on equitable grounds based on his dilatory tactics, as properly found by the Eleventh Circuit, Long would still not be entitled to a stay of execution because he failed to establish that he has a substantial likelihood of success on the merits of his section 1983 complaint. As both the district court and court of appeals found when analyzing Long's claims, the doctrine of res judicata precludes him from relitigating his claims in federal court after having raised the identical claims in state court. Long v. Secretary, Fla. Dep't of Corr., No. 19-11942-P, 2019 WL 2204427 (11th Cir. May 22, 2019). Furthermore, even if res judicata does not bar Long's claims, Long could not show a substantial likelihood of success as his claims are meritless, barred by the statute of limitations,[2] and barred for failure to exhaust his

[2] As the state argued below, Long has little chance of success on his underlying Eighth Amendment challenge because his complaint

administrative remedies.

The lower federal courts properly found that Long failed to establish a substantial likelihood of success on the merits of his section 1983 claims because res judicata barred consideration of these claims. As this Court noted in Allen v. McCurry, 449 U.S. 90, 94 (1980), federal courts have traditionally adhered to the doctrine of res judicata which provides that "a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action." This Court noted the benefits of this doctrine as it reduces unnecessary litigation and promotes the comity between state and federal courts. Id. at 95-96. This Court specifically addressed the application of res judicata in a section 1983 action and found that "nothing in the language or legislative history of § 1983

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is barred by the statute of limitations. "[A] method of execution claim accrues on the later of the date on which state review is complete, or the date on which the capital litigant becomes subject to a new or substantially changed execution protocol." McNair v. Allen, 515 F.3d 1168, 1174 (11th Cir. 2008). In Henyard v. Sec'y, Dept. of Corr., 543 F.3d 644, 647 (11th Cir. 2008), this Court held that the statute of limitations for § 1983 claims regarding Florida's 2007 lethal injection protocol for inmates whose convictions and sentences were final before Florida's adoption of lethal injection as a means of execution began to run on February 13, 2000, and expired on February 13, 2004. Florida's January 4, 2017 protocol substituting one anesthetic for another, notwithstanding Long's speculative challenges, does not constitute a major change that would operate to restart the limitations period.

proves any congressional intent to deny binding effect to a state-court judgment or decision when the state court, acting within its proper jurisdiction, has given the parties a full and fair opportunity to litigate federal claims, and thereby has shown itself willing and able to protect federal rights." Id. at 103-04.

The Eleventh Circuit Court of Appeals consistently applied res judicata in section 1983 actions. See Muhammad v. Secretary, Fla. Dep't of Corr., 739 F.3d 683 (11th Cir. 2014); Starship Enterprises of Atlanta, Inc. v. Coweta County, 708 F.3d 1243, 1252–53 (11th Cir. 2013); Green v. Jefferson County Comm'n, 563 F.3d 1243, 1251-54 (11th Cir. 2009). In determining whether an action is barred by res judicata, a federal court applies the law of the state in which it sits, which in this case is Florida. Kremer v. Chemical Constr. Corp., 456 U.S. 461, 481-82 (1982); Starship Enterprises, 708 F.3d at 1252–53. The Eleventh Circuit Court of Appeals explained Florida's res judicata principles in detail in Brown v. R.J. Reynolds Tobacco Co., 611 F.3d 1324, 1331-34 (11th Cir. 2010), and noted that claim preclusion "bars a subsequent action between the same parties on the same cause of action." Id. at 1332.

In the instant case, the same parties, Long and the State of Florida, litigated the same cause of actions in state court

as those Long subsequently raised in his section 1983 complaint.[3] As part of the current death warrant litigation, Long filed a successive postconviction motion in the state trial court raising six claims, including Eighth Amendment challenges to Florida's lethal injection protocol, both generally and as-applied to Long, and claims relating to his public records requests and execution witness requests. The state postconviction court granted an evidentiary hearing on Long's as-applied constitutional challenge to the lethal injection protocol and summarily denied his remaining claims relying on well established precedent. The Florida Supreme Court affirmed the trial court's ruling. Long v. State, Case No. SC19-726, 2019 WL 2150942 (Fla. May 17, 2019), petition for cert. filed, (U.S. May 20, 2019) (No. 18-9358).

Because there has been a merits ruling from the state courts on the exact same issues Long raised in his § 1983 complaint, the lower federal courts properly found that his

[3] Long argued below that the parties were different because his state court proceedings involved the "State of Florida," whereas his § 1983 claim involved the Secretary of Florida's Department of Corrections and the Warden of Florida State Prison. This argument is without merit. See Muhammad v. Secretary, Fla. Dep't of Corr., 739 F.3d 683, 689 (11th Cir. 2014) (stating that the parties involved in the state-court action and the federal lawsuit were the same because the individuals named in the federal lawsuit were sued in their official capacity and were in privity with the State of Florida, the defendant in the state-court action).

claims were barred by res judicata. Long may not raise a claim in state court and obtain a merits ruling from the state court and then walk across the street and file the same claim in federal court. Res judicata prohibits such relitigation. Muhammad v. Secretary, Fla. Dep't of Corr., 739 F.3d 683 (11th Cir.), cert. denied, 134 S. Ct. 894 (2014).

In Muhammad, the Eleventh Circuit held that a challenge to Florida's lethal injection protocol was barred by res judicata. Muhammad filed a section 1983 action challenging Florida's lethal injection protocol and requested a stay of execution. Id. at 685. Muhammad argued that Florida's protocol, which at that time used midazolam hydrochloride as the first drug in a three-drug protocol, violated the Eighth Amendment's prohibition on cruel and unusual punishment because it did not effectively anesthetize the inmate before the second and third drugs were administered. Id. However, shortly before filing the section 1983 suit in federal court, Muhammad filed a postconviction motion in state court raising the identical challenges as those raised in federal court and the Florida Supreme Court affirmed the state court's denial of the Eighth Amendment challenges. Id. at 685-86. Muhammad's federal complaint, like his state court motion, relied primarily on the same evidence as in the state court and alleged that the use of midazolam violated the Eighth

Amendment. Id. at 686-87.

The Eleventh Circuit affirmed the district court's denial of a stay of execution and concluded that because the Florida Supreme Court had already decided his Eighth Amendment claim, res judicata barred any federal complaint. Muhammad, 739 F.3d at 688-89. The Eleventh Circuit explained that federal courts apply the res judicata principles of the state in which the federal action arises and that Florida law precluded subsequent suits when there was a judgment on the merits. The court concluded that, under Florida's res judicata principles, the Florida Supreme Court's decision barred his "attempt to litigate that claim anew in federal court" because the Florida Supreme Court's decision "was a judgment on the merits." Id. at 688-89 (noting that the federal review available to Muhammad was via a petition for a writ of certiorari in the United States Supreme Court, not a section 1983 filed in federal district court).[4]

For the same reasons as in Muhammad, Long's section 1983 action is barred by the doctrine of res judicata. Muhammad is indistinguishable from Long's case. All of the counts in Long's section 1983 action were raised in state court, or could have

[4] Long has a pending petition for writ of certiorari from the Florida Supreme Court's decision affirming the denial of the same claims as those raised in his section 1983 complaint. See Long v. State, Case No. SC19-726, 2019 WL 2150942 (Fla. May 17, 2019), petition for cert. filed, (U.S. May 20, 2019) (No. 18-9358)

been raised, and the state courts rejected his claims on the merits. The entire action is barred by res judicata. See Long v. Secretary, Department of Corrections, Case No. 19-11942-P, 2019 WL 2204427 at *5-6 (11th Cir. May 22, 2019).

Any attempt to avoid this bar by alleging that he was denied a "full and fair" opportunity to litigate his claims in state court is unavailing as res judicata bars all of the claims that were raised, *or that could have been raised*, during Long's previous state court proceedings. See Allen v. McCurry, 449 U.S. 90, 94 (1980) (stating that res judicata precludes "the parties or their privies from relitigating issues that were *or could have been* raised" in the state court action) (emphasis added); Citibank, N.A. v. Data Lease Financial Corp., 904 F.2d 1498, 1501 (11th Cir. 1990) (noting that the "doctrine of res judicata, or claim preclusion, bars the filing of claims which were raised or could have been raised in an earlier proceeding"); Muhammad, 739 F.3d at 688 ("Florida law establishes that '[a] judgment on the merits rendered in a *former* suit between the same parties or their privies, upon the same cause of action, by a court of competent jurisdiction, is conclusive not only as to every matter which was offered and received to sustain or defeat the claim, *but as to every other matter which might with propriety have been litigated and*

determined in that action.'") (emphasis added) (quoting Florida Dep't of Transp. v. Juliano, 801 So. 2d 101, 105 (Fla. 2001)).

Long argues that res judicata should not apply based on the "rarely applied exception" that it would result in manifest injustice because he was allegedly denied a fair and full opportunity to litigate his claims in state court. However, as the Eleventh Circuit noted, there are three "big problems with this argument":

> First, his position is unprecedented. Long has not pointed to a single published decision of the Florida courts or this Court applying Florida law holding that it is a "manifest injustice" to apply res judicata if the initial state court decision resolved a claim without granting an evidentiary hearing.
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> The second problem with Long's position is that the "extraordinarily constrained timeline" that he complains of is a direct result of his delay in filing his method of execution claims in state postconviction proceedings until after his execution date had been set. . . .
>
> There is another fundamental problem with Long's arguments against the application of res judicata. Reduced to its essence, his position is that the res judicata doctrine applies only if the court in which it is asserted agrees with the initial court's decision on de novo consideration. And, he says, we shouldn't agree with the decision of the Florida courts on these claims for a number of reasons. But that is not the way that res judicata works. If it did, the doctrine would be toothless, pointless, and fruitless. It would apply only when it made no difference. The Florida courts have never suggested such a rule-devouring exception, and we will not presume to create one for them here.

Long v. Secretary, Department of Corrections, Case No. 19-11942-

P, 2019 WL 2204427 at *5-6 (11th Cir. May 22, 2019) (footnote omitted).

Even if res judicata does not bar Long's claims, he still has not shown a substantial likelihood of success on the merits of his section 1983 complaint. As discussed, Long raised both general and as-applied challenges to Florida's lethal injection procedures in both state and federal court. After Long was denied an evidentiary hearing in state court on his facial challenge to Florida's use of etomidate in its three-drug protocol, he brought an identical claim in federal court and sought a stay of his execution. The stay was properly denied because Long was not entitled to an evidentiary hearing and could not establish a substantial likelihood of success on the merits of his claim. 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, Case No. SC19-726, 2019 WL 2150942, at *5 (Fla. May 17, 2019), petition for cert. filed, (U.S. May 20, 2019) (No. 18-9358). 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. Because Long had not met the pleading requirements under Glossip v. Gross, 135 S. Ct. 2726, 2737 (2016)); Baze v. Rees, 553 U.S. 35 (2008); and Bucklew v. Precythe, 139 S. Ct. 1112 (2019), he has not shown a substantial likelihood of success on his claim.

Long was further 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. Long's baseless assertion that Eric Branch must have been experiencing pain from the etomidate injection is unsupported when Branch actually yelled, "Murderers!" The most that can be gleaned from his statement is that he was unhappy about being executed.[5] Long's assertions that other inmates were twitching or breathing heavily certainly could not establish that Long is at a substantial risk of harm. There is nothing from any of Florida's five previous executions using etomidate to suggest that Florida's protocol involves unconstitutional pain and suffering.

Notably, however, Long was provided a full and fair evidentiary hearing in state court on his as-applied challenge to the use of etomidate in the state's lethal injection

[5] This is supported by Branch's previous statement that the governor and attorney general should have been the ones carrying out his sentence rather than the correction officers in his room.

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

The State also presented the testimony of a pharmacologist, Dr. Buffington, and both of the State's experts agreed that the massive 200 milligram dose of etomidate administered would effectively render Long unconscious, and that he would remain unconscious and unable to feel pain from the subsequent two drugs in the lethal injection protocol. The experts also opined that Long's medical conditions would not interfere with the proper functioning of etomidate. The state circuit court rejected the testimony of Long's expert, Dr. Lubarsky, specifically finding the state's expert anesthesiologist to be more credible. Accordingly, given this evidence, Long has no likelihood of success on the merits of his federal section 1983 Eighth Amendment lethal injection claims attempting to relitigate the same claims he raised in state court. He is certainly not entitled to have his

execution, scheduled for today, to be stayed so that he can have yet another opportunity to attempt to prove that the use of etomidate in Florida's three-drug lethal injection protocol is unconstitutional.

C. BALANCE OF EQUITIES

Finally, Long has failed to demonstrate that the balance of equities favor the granting of a stay of execution. This Court has explained "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, 584 (2006). Here, the State's strong interest in the timely enforcement of a sentence is not outweighed by the unlikely possibility that Long's petition for certiorari will be granted by this Court. Long's arguments are nothing more than a meritless attempt to postpone his execution. The equities in this case tilt decidedly against Long in favor of the State and the victim's family members. Particularly, at this late date and time, as noted, the State has marshaled its resources to carry out the execution and numerous family members of the victims of Long's murders and sexual batteries have gathered to see that his death sentence is carried out. See Price v. Dunn, 587 U.S. ___, 2019 WL 2078104 at *5-6 (May 13, 2019) (Thomas, J., concurring in the denial of certiorari) (noting the substantial

injustice to the victim's family, in the form of justice delayed, by allowing a stay of execution based on a section 1983 action filed shortly before an execution). Accordingly, the State respectfully requests that this Court deny the instant application for a stay of execution.

CONCLUSION

Based on the foregoing, Respondents respectfully requests that this Court deny Long's petition for writ of certiorari and his application for stay of execution.

Respectfully submitted,

ASHLEY MOODY
ATTORNEY GENERAL

/s/ Stephen D. Ake
*STEPHEN D. AKE
Senior Assistant Attorney General
Florida Bar No. 014087
*Counsel of Record

CHRISTINA Z. PACHECO
Assistant Attorney General
Florida Bar No. 71300

Office of the Attorney General
3507 East Frontage Road, Suite 200
Tampa, Florida 33607-7013
Telephone: (813) 287-7910
Facsimile: (813) 281-5501
stephen.ake@myfloridalegal.com
christina.pacheco@myfloridalegal.com
E-Service: capapp@myfloridalegal.com
COUNSEL FOR RESPONDENTS