

No. 18-\_\_\_\_\_

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2018

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MARION WILSON, JR.,

Petitioner,

-v-

GDCP WARDEN,

Respondent.

**CAPITAL CASE: EXECUTION SCHEDULED  
FOR JUNE 20, 2019, AT 7:00 P.M.**

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**MOTION FOR STAY OF EXECUTION  
(FILED IN CONNECTION WITH DNA TESTING CASE)**

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Comes now, Petitioner, MARION WILSON, JR., by and through undersigned counsel, and prays that an Order be entered staying the execution of his sentence of death until further Order of this Court, and in support of his application, respectfully states as follows:

1. Petitioner filed the instant action on June 20, 2019, requesting that this Court grant review of the Georgia Supreme Court's denial of relief as to his claim of the trial court improperly denied him access to evidence for forensic DNA testing.

2. Georgia has scheduled Petitioner's execution for June 20, 2019, at 7:00 p.m. Petitioner requests that the execution be stayed by this Court until the Petition for Writ of Certiorari is considered and finally acted upon.

3. The Superior Court of Baldwin County, State of Georgia, set from noon on June 20, 2019, through noon on June 27, 2019, as the period during which Petitioner's execution may

be carried out. *See* Exhibit A (execution warrant), attached. The execution is currently scheduled for June 20, 2019. The Georgia Board of Pardons and Paroles denied clemency on June 20, 2019.

4. A stay of execution is justified on the grounds that Petitioner faces imminent execution despite the fact that he has effectively challenged the lack of process and other constitutional infirmities in the Georgia court's refusal to conduct a hearing to determine his entitlement to forensic DNA testing of critical, heretofore untested evidence relied on by the prosecutor to obtain Mr. Wilson's conviction and death sentence, as set forth in greater detail in Mr. Wilson's Petition for Writ of Certiorari.

5. DNA testing of the evidence could produce proof that Mr. Wilson did not shoot the victim and that the prosecutor's arguments about his involvement in the crime and his culpability were grossly overblown. Favorable results could demonstrate that Mr. Wilson is ineligible for execution under *Enmund v. Florida*, 458 U.S. 782 (1982), and *Tison v. Arizona*, 481 U.S. 137 (1987), because "he did not himself kill, attempt to kill or intend that a killing would take place," and his "involvement in the events leading up to the murder[] was [not] active, recklessly indifferent and substantial." *Kennedy v. Louisiana*, 554 U.S. 407, 420-21 (2008) (citing *Enmund* and *Tison*).

6. Moreover, any hope that Georgia's clemency procedures would act as a "fail safe"<sup>1</sup> to "correct injustices that the ordinary criminal process seems unable or unwilling to consider,"<sup>2</sup> disintegrated on June 20, 2019, with the Board of Pardons and Paroles final denial of executive clemency.

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<sup>1</sup> *Herrera v. Collins*, 506 U.S. 390, 414 (1993).

<sup>2</sup> *Dretke v. Haley*, 541 U. S. 386, 399 (2004) (Kennedy, J., dissenting).

7. Petitioner is detained at the Georgia Diagnostic Prison, in Jackson, Georgia, under a sentence of death. A stay of execution will not prejudice the State of Georgia or interfere with Petitioner's custodial status.


8. A stay of execution is necessary to ensure that Petitioner is not executed before this Court is able to resolve the matters contained in the Petition for Writ of Certiorari. The execution of Petitioner would obviously inflict irreparable harm.

WHEREFORE, Petitioner respectfully requests an Order staying Petitioner's execution, pending resolution of the proceedings and further Order of this Court.

Respectfully submitted this 20th day of June, 2019.

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COUNSEL FOR MR. WILSON

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**CERTIFICATE OF SERVICE**

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This is to certify that I have served a copy of the foregoing document this day by U.S.

Mail and/or electronic mail on counsel for Respondent at the following address:

Beth Burton, Esq.  
Deputy Assistant Attorney General  
bburton@law.ga.gov  
132 State Judicial Building  
40 Capitol Square, S.W.  
Atlanta, Georgia 30334-1300

This the 20th day of June, 2019.



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Attorney