

No. 19-_____

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

DONNIE CLEVELAND LANCE,

Petitioner,

-v.-

STATE OF GEORGIA,

Respondent.

On Petition for Writ of *Certiorari*
To The Supreme Court of Georgia

**MOTION FOR A STAY OF EXECUTION
PENDING CONSIDERATION OF PETITION
FOR WRIT OF CERTIORARI TO THE
GEORGIA SUPREME COURT**

**CAPITAL CASE:
EXECUTION SCHEDULED JANUARY 29, 2020, 7:00 PM**

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

Petitioner Donnie Cleveland Lance, a death-sentenced prisoner in the State of Georgia, requests that this Court stay his execution, currently scheduled for 7:00 p.m. Wednesday, January 29, 2020, until further Order of this Court, in order to permit the consideration and disposition of this petition.

PROPOSED QUESTIONS PRESENTED

1. Was petitioner denied due process and equal protection under the Fourteenth Amendment by the state courts' imposition of extra-statutory requirements that petitioner present "convincing and detailed evidence of his innocence" and demonstrate "due diligence" before obtaining DNA testing critical to determining whether Petitioner is innocent.

2. Did the Georgia court violate petitioner's rights under the Eighth and Fourteenth Amendments by evaluating the impact of favorable DNA results by reference only to a reading of the evidence actually presented at the trial favorable to the State rather than by reviewing the entire record, including the habeas record, in an objective manner and by requiring that the evidence would result in acquittal as opposed to considering broader sentencing implications?

JURISDICTION

Mr. Lance 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

Petitioner was convicted of murder and sentenced to death in the Superior Court of Jackson County, Georgia on June 23, 1999. The Georgia Supreme Court affirmed Mr. Lance's convictions and sentences of death on February 25, 2002. *Lance v. State*, 560 S.E.2d 663 (Ga. 2002). A timely filed petition for writ of certiorari was denied on December 2, 2002 in this Court. *Lance v. Georgia*, 537 U.S. 1050 (2002). Rehearing was denied on January 27, 2003. *Lance v. Georgia*, 537 U.S. 1179 (2003).

On May 15, 2003, the Superior Court of Jackson County signed an order setting Mr. Lance's execution date for the week beginning at noon on June 2, 2003 and ending at noon on June 9, 2003. Mr. Lance filed a skeletal petition for writ of habeas corpus and a Motion for Stay of Execution in Butts County on May 29, 2003, and an order staying the execution was entered on that date. Mr. Lance's Amended Habeas Petition was filed on August 25, 2005. After a four-day evidentiary hearing, the Superior Court of Butts County granted Mr. Lance's habeas petition with respect to sentencing phase, and denied the petition with respect to guilt phase. *Lance v. Hall*, No. 2003-V-490, slip op. at 58 (Super. Ct. Butts Cty. Apr. 28, 2009). The State appealed the order to the Georgia Supreme Court, and Mr. Lance filed a cross appeal. The Georgia Supreme Court reversed the grant of relief from the habeas court. *Hall v. Lance*, 687 S.E.2d 809, 812 (Ga. 2010). This Court denied certiorari on June 28, 2010, and denied a petition for rehearing on September 3, 2010. *Lance v. Hall*, 561 U.S. 1026 (2010).

Mr. Lance filed a federal petition for a writ of habeas corpus on July 29, 2010, which was denied by the United States District Court for the Northern District of Georgia in an unpublished opinion on December 22, 2015. *Lance v. Upton*, Case No. 2:10-CV000143-WBH (N.D. Ga. 2015). The Eleventh Circuit Court of Appeals affirmed the district court's ruling on August 31, 2017. *Lance v. Warden*, 706 F. App'x 565 (11th Cir. 2017). On January 7, 2019, this Court declined to hear Mr. Lance's case over the dissent of three justices. *Lance v. Sellers*, 139 S. Ct. 511 (2019) (Sotomayor, Ginsburg & Kagan, JJ., dissenting).

On April 26, 2019, Mr. Lance filed an extraordinary motion for new trial and for post-conviction testing in the Superior Court of Jackson County. An evidentiary hearing was held on July 31, 2019. The Superior Court denied the Motion on September 30, 2019, and an Application to Appeal the Denial of the motion was filed with the Georgia Supreme Court on October 30, 2019. The Georgia Supreme Court denied the Application on December 2, 2019. A timely filed Motion for Reconsideration was denied on January 13, 2020.

The Department of Corrections has scheduled Petitioner's execution for 7:00 p.m., Wednesday, January 29, 2020.

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. Lance respectfully submits that he meets this standard.

A. Irreparable Injury

If this Court does not grant a stay, Mr. Lance will be executed at 7:00 p.m. on January 29, 2020. 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. Lance’s claims address whether the Georgia courts violated his Eighth and Fourteenth Amendments rights. The potential injury is not only his death, but denial of his liberty interest in demonstrating his actual innocence through unfair procedures created by the State of Georgia. Given these facts and 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. Lance’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. Lance has effectively challenged the lack of process and other constitutional infirmities in the Georgia court’s procedure for determining when forensic DNA testing of critical, heretofore untested evidence is permitted, as set forth in greater detail in Mr. Lance’s Petition for Writ of Certiorari. The Georgia courts’ actions denied petitioner the due process right to DNA testing to establish his innocence and violated his right to equal protection of the law. The precluded DNA testing could exonerate Mr. Lance, prohibiting both his imprisonment and imminent execution. 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. Lance’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. Lance respectfully requests an Order staying his execution pending consideration of his petition for writ of certiorari to the Supreme Court of Georgia.

Respectfully submitted this, the 23rd day of January, 2020.

/s/ Mary E. Wells
Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on January 23rd, 2020, a true and correct copy of the foregoing Motion For A Stay Of Execution Pending Consideration Of Petition For Writ Of Certiorari To The Georgia Supreme Court was served electronically via ECF upon Respondent's counsel as follows:

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Dated: This, the 23rd day of January, 2020.

/s/ Mary E. Wells
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