

No. 19-_____

IN THE
SUPREME COURT OF THE UNITED STATES

DONNIE CLEVELAND LANCE,

Petitioner,

-v.-

BENJAMIN FORD, WARDEN,

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 his rights under the Sixth, Eighth, and Fourteenth Amendments when he was sentenced to death following his indictment by a non-randomly selected grand jury?

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. Mr. Lance filed a Petition for Writ of Certiorari in this Court on January 27, 2020, which is still pending.

Mr. Lance filed a petition for writ of habeas corpus in the Superior Court of Butts County on December 18, 2019. The habeas court denied the petition on January 24, 2020. Mr. Lance filed an Application for Certificate of Probable Cause to Appeal in the Georgia Supreme Court on January 25, 2020, which was denied by the court on January 29, 2020. Mr. Lance has filed a Petition for Writ of Certiorari in this Court simultaneously with this Motion for Stay of Execution.

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 grand jury that issued the indictment in his capital case was selected in a manner that violated his rights under the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution.

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 method by which the grand jury that issued the indictment in his capital case was selected. Mr. Lance has alleged facts which demonstrate that the grand jury was not randomly selected, in violation of the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution. Following the indictment by this non-randomly selected grand jury, Petitioner received a sentence of death. Due to

the grand jury not being randomly selected, his death sentence is invalid and unconstitutional. If Mr. Lance prevails on this claim, the indictment in his case will be declared invalid and his convictions and sentences of death will no longer stand.

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 29th day of January, 2020.

/s/ Mary E. Wells

Mary E. Wells
Ga. Bar No. 747852
623 Grant Street SE
Atlanta, Georgia 30312-3240
T. 404-408-2180
mewells27@comcast.net

/s/ James W. Boswell

James W. Boswell
Ga. Bar No. 069838
L. Joseph Loveland – former partner
Ga. Bar No. 459350
Jonathan R. Chally
Ga. Bar No. 141392
KING & SPALDING LLP
1180 Peachtree Street NE
Atlanta, Georgia 30309
T. 404-572-4600
ljloveland@gmail.com
jboswell@kslaw.com
jchally@kslaw.com

Counsel for Petitioner Donnie Cleveland Lance

CERTIFICATE OF SERVICE

I hereby certify that on January 29, 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:

Beth Burton
Senior Assistant Attorney General
Office of Attorney General
132 State Judicial Building
40 Capitol Square, S.W.
Atlanta, Georgia 30334
bburton@law.ga.gov

J. Bradley Smith
Piedmont Judicial Circuit
District Attorney's office
5000 Jackson Parkway Suite 160
Jefferson, Georgia 30549
bsmith@barrowga.org

Dated: This, the 29th day of January, 2020.

/s/ Mary E. Wells
Counsel for Petitioner