

No. 20-_____

IN THE
SUPREME COURT OF THE UNITED STATES

In re: NICHOLAS TODD SUTTON, *Petitioner*

APPLICATION FOR STAY OF EXECUTION

THIS IS A CAPITAL CASE
EXECUTION SET FOR FEBRUARY 20, 2020, at 7:00 PM CST

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Dated: February 18, 2020

To the Honorable Sonia Sotomayor, Associate Justice of the United States and Circuit Justice for the Sixth Circuit:

Petitioner Nicholas Todd Sutton respectfully moves for an order staying his execution which is set for February 20, 2020 at 7:00 PM CST, in the above-entitled proceeding, pending the filing of and final action by this Court on the original petition for writ of habeas corpus filed concurrently with this Application.

Pursuant to Supreme Court Rules 23.1, 23.2, 28 U.S.C. § 2101(f) and 28 U.S.C. § 1651, the stay may lawfully be granted.

In the accompanying Original Petition for Writ of Certiorari, Mr. Sutton asks this Court to review the constitutionality of his conviction and death sentence when he was forced to appear before the jury wearing visible shackles and handcuffs. Execution of Mr. Sutton's death sentence would therefore be in violation of the Fifth, Eighth, and Fourteenth Amendments of the United States Constitution.

Accordingly, this Court must stay his execution so that it may fully consider his Original Petition for Writ of Habeas Corpus.

INTRODUCTION

Mr. Sutton's was visibly shackled and handcuffed during his capital trial and sentencing where there was no hearing to determine whether a specific justification existed for heightened security, alternatives were not explored, and no steps were taken to minimize the prejudicial effect of the restraints. The appearance of Mr. Sutton in chains was inherently prejudicial, undermined his constitutional rights, eroded the presumption of innocence, and tipped the scales in favor of conviction

and the imposition of a death sentence. The evidence demonstrating that Mr. Sutton was visibly shackled and handcuffed during his capital trial and sentencing, that the jury observed Mr. Sutton forcibly shackled and handcuffed, and its effect on the deliberations is newly discovered evidence. This evidence was not previously developed and presented due to the denial of resources available to Mr. Sutton's previous post-conviction counsel and the failings of both trial and prior post-conviction counsel

Mr. Sutton has twice been told that his shackling claim is not cognizable and that he is afforded no procedural mechanism in the State of Tennessee to right this claim of constitutional error. Furthermore, the restrictions on second or successive habeas corpus applications prevent the lower federal courts from addressing this claim. Thus, exceptional circumstances warrant the exercise of an extraordinary writ because adequate relief cannot be obtained in any other form or in any other court.

REASONS FOR THE STAY

As more fully developed in the Original Petition for Writ of Habeas Corpus, the shackling and handcuffing of a defendant "almost inevitably affects adversely the jury's perception of the character of the defendant." *Deck v. Missouri*, 544 U.S. 622, 633 (2005). Here, Mr. Sutton was on trial for murder and his propensity for violence was a critical issue in both the guilt-innocence and penalty phases. The prejudice to Mr. Sutton caused by his visible shackling and cuffing was so lasting that, more than thirty years later, at least one juror remains traumatized by the

experience. The appearance of a defendant in chains implies to a jury, as a matter of common sense, that court authorities consider the defendant a danger to the community and a threat to those in the courtroom, and the defendant possesses the character of someone who would commit the charged offense. As a result, in finding Mr. Sutton guilty and sentencing him to death, the jury likely relied upon the improper inference that he was a violent person as evidenced by the visible shackles.

The evidence demonstrating that Mr. Sutton was visibly shackled and handcuffed during his capital trial and sentencing, that the jury observed Mr. Sutton forcibly shackled and handcuffed, and its effect on the deliberations is newly discovered evidence. This evidence was not previously developed and presented due to the denial of resources available to Mr. Sutton's previous post-conviction counsel and the failings of both trial and prior post-conviction counsel. The facts underlying this claim would have been admissible had they come to light at any time during the trial or on motion for a new trial. The juror statements that they saw the shackles the State put on Mr. Sutton are credible in that they are offered in sworn statements under penalty of perjury and are not in any way self-serving. Had this evidence been presented and litigated on a motion for a new trial or in the initial state post-conviction proceedings, it would have resulted in a different judgment.

Because of this, this Court must stay Mr. Sutton's execution so that it can consider his petition and grant the relief requested, pursuant to Article I, Section 9 of the United States Constitution, Article III of the United States Constitution, the

Fifth, Eighth, and Fourteenth Amendments to the United States Constitution, 28 U.S.C. § 1331, and 28 U.S.C. § 2241 *et seq.*, including 28 U.S.C. § 2254. This is particularly important here because shackling is so inherently prejudicial that “where a court, without adequate justification, orders the defendant to wear shackles that will be seen by the jury, the defendant need not demonstrate actual prejudice to make out a due process violation.” *Deck*, 544 U.S. at 635 (quoting *Chapman v. California*, 386 U.S. 18, 24 (1967)). Unless this Court stays this execution, a death sentence procured through the use of highly prejudicial handcuffing and shackling will be carried out.

CONCLUSION

Executing Nicholas Todd Sutton pursuant to a death sentence tainted by handcuffing and shackling cannot be consistent with our Constitution’s requirements for justice. The Fifth, Eighth and Fourteenth Amendments demand better. For the foregoing reasons, and for all of the reasons contained his Original Petition for Writ of Habeas Corpus, this Court must stay this execution.

Respectfully submitted,



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