No. 20A4
CAPITAL CASE

In the Supreme Court of the United States

UNITED STATES, ET AL.,

Applicants,

v.

WESLEY IRA PURKEY,

Respondent.

On Application to Vacate Stay Pending Appeal to the United States Court of Appeals for the Seventh Circuit

MOTION FOR LEAVE TO FILE AS AMICUS CURIAE IN SUPPORT OF APPLICANTS

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MOTION FOR LEAVE TO FILE

The State of Arizona moves for leave to file a brief as amicus curiae in support of Applicants' Application to Vacate Stay of Execution. *See* Sup. Ct. R. 37.2(a).

After brutally murdering an 80-year old woman with the claw end of a hammer (for which he received a life sentence), Respondent Wesley Ira Purkey confessed to murdering and then dismembering 16-year-old Jennifer Long with a boning knife, after he kidnapped and raped her. Purkey was sentenced to death on January 23, 2004 for Jennifer Long's vicious murder.

Since being sentenced to death more than sixteen years ago, Purkey has pursued numerous actions challenging his conviction and sentence. He lost his direct appeal after this Court denied his petition for writ of certiorari in 2006. He similarly lost his post-conviction relief action under 28 U.S.C. § 2255 in 2014. But when the federal government issued a notice scheduling Purkey's execution for December 13, 2019, he filed a new wave of lawsuits.

On October 21, 2019 he brought an action challenging the Bureau of Prisons' execution protocol (which the Court declined to upend on June 29, 2020). On November 11, 2109, he brought an action seeking relief under *Ford v. Wainwright*, 477 U.S. 399 (1986), claiming that he no longer appreciates why he faces execution. And, before bringing these two actions, he brought this novel action under 28 U.S.C. § 2241 on August 27, 2019, in which he seeks to evade the bar on successive post-conviction actions by raising yet another ineffective assistance of counsel claim.

The Seventh Circuit rejected Purkey's § 2241 claim on the merits, as did the district court before it. The court recognized that, if his claim were allowed to proceed, it would lead to "a never-ending series of reviews and re-reviews" of habeas corpus actions. *Purkey v. United States*, — F.3d —, 19-3318, 2020 WL 3603779, at *9 (7th Cir. July 2, 2020). The panel nevertheless granted a stay of Purkey's July 15 execution—not because Purkey had a significant possibility of success on the merits, but because the panel thought the issues Purkey raised (and which the court rejected) were perhaps "worthy of further exploration." *Id.* at *11.

This ruling undermines the interest in the finality of lawful capital sentences. This Court has long held that, "like other stay applicants, inmates seeking time to challenge the manner in which the State plans to execute them must satisfy all of the requirements for a stay, including a showing of a significant possibility of success on the merits." *Hill v. McDonough*, 547 U.S. 573, 584 (2006).

States in which capital punishment is authorized, including the State of Arizona, have an important perspective and a significant interest in ensuring that—after direct and collateral reviews are completed—stays of execution are not issued absent a significant possibility of success on the merits. This rule is necessary to promote the rule of law and to prevent further harm to victims of capital offenses. *See Bucklew v. Precythe*, 139 S. Ct. 1112, 1133 (2019) ("Both the State and the victims of crime have an important interest in the timely enforcement of a sentence.").

States have an interest in carrying out lawful sentences, and in the finality of their judgments. "Arizona courts are especially concerned with the finality of criminal cases because the Arizona Constitution requires courts to protect the rights of victims of crime by ensuring a 'prompt and final conclusion of the case after the conviction and sentence.'" *State v. Towery*, 204 Ariz. 386, 391, ¶ 14 (2003) (quoting Ariz. Const. art. II, § 2.1(A)(10)). Indeed, carrying out criminal sentences is a cornerstone of the justice system upon which States rely. In *Teague v. Lane*, this Court expressed its agreement with Justice Harlan, quoting his statement that "[t]he interest in leaving concluded litigation in a state of repose … may quite legitimately be found … to outweigh in some, many, or most instances the competing interest in readjudicating convictions according to all legal standards in effect …." 489 U.S. 288, 306 (1989) (*quoting Mackey v. United States*, 401 U.S. 667, 682–683 (1971)). But finality is put in jeopardy when, as in the underlying case, never-ending appeals and stays without a determination of likelihood of success are allowed to thwart lawfully imposed, final judgments.

The rights of victims have also been recognized in States across the country. *See, e.g.*, Ariz. Const. art . II, § 2.1 (victims' bill of rights). These rights are assaulted each time proceedings are delayed or the finality of judgments is jeopardized, leading to secondary victimization that exacerbates the wounds of the initial criminal act. *See* Ulirich Orth, *Secondary Victimization of Crime Victims by Criminal Proceedings*, 15 Soc. Just. Res. 313, 321 (2002) (secondary victimization can be more harmful than the crime itself). The harms inflicted on victims through

delay has been repeatedly recognized in the law. "Only with an assurance of real finality can the State execute its moral judgment and can victims of crime move forward knowing the moral judgment will be carried out." *Calderon v. Thompson*, 523 U.S. 538, 539 (1998). "Unsettling these expectations inflicts a profound injury to the 'powerful and legitimate interest in punishing the guilty,' … an interest shared by the State and crime victims alike." *Id.* (*quoting Herrera v. Collins*, 506 U.S. 390, 421 (1993) (O'Connor, J., concurring)). The lengthening of these federal proceedings and delay in the final implementation of the sentence creates recognizable pain in victims and postpones their own ability to heal their wounds. *Id.* at 556.

* * *

The stay here undermines the government's interest in finality and promotes litigation aimed at ensuring that lawful capital sentences are never actually carried out. The people of the State in which a crime occurs, the victims of that crime, "and others like them deserve better" than the "excessive" "delays that now typically occur between the time an offender is sentenced to death and his execution." *Bucklew*, 139 S. Ct. at 1133 (quotes omitted). A State's interests in enforcing its own sentences, protecting its citizens, and maintaining confidence in the integrity of the legal system support the United States' position.

CONCLUSION

The State of Arizona's perspective may "be of considerable help to the Court." Sup. Ct. R. 37.1. The Court should, therefore, grant the State of Arizona leave to

file an amicus brief which further addresses the State's important perspective and its significant interest in ensuring that, once direct and collateral reviews are completed, stays of execution are not issued absent a significant possibility of success on the merits.

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Respectfully Submitted,

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