No. 21–A705

In the Supreme Court of the United States

CLARENCE WAYNE DIXON,
Petitioner,

v.

DAVID SHINN, ET AL.,
Respondents.

EXECUTION SCHEDULED FOR MAY 11, 2022 AT 10:00 AM MST

OPPOSITION TO APPLICATION FOR STAY OF EXECUTION

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In his eleventh-hour Application for Stay of Execution, Petitioner Clarence Wayne Dixon seeks to prevent Arizona from carrying out his lawfully-imposed sentence of death scheduled for less than 12 hours from now, at 10:00 a.m. on Wednesday, May 11, 2022. As grounds, Dixon argues that the Ninth Circuit Court of Appeals erred when it affirmed the denial of his habeas petition and denied his motion for a stay of execution, finding that the state courts' conclusion that Dixon is competent to be executed was not an unreasonable decision with which no fair-minded jurist could agree. Because the state courts applied the correct Supreme Court standard for competency to be executed and reached a decision based on reasonable determinations of the facts, Dixon's claim lacks merit and his last-minute request for stay of execution should be denied.[1]

I. FACTUAL AND PROCEDURAL BACKGROUND.

A. Dixon's convictions and capital case.

The court of appeals detailed the facts of Dixon's case and his criminal history in its 2019 opinion affirming the district court's denial of habeas relief. *Dixon v Ryan (Dixon IV)*, 932 F.3d 789, 795–800 (9th Cir. 2019). In June 1977, Dixon struck a teenage girl with a metal pipe and was charged with assault with a deadly weapon. *Id.* at 796. Dixon was determined not competent to stand trial by

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[1] The statutory victim under A.R.S. § 13–4401(19), Ms. Leslie James, the sister of murder victim Deana Bowdoin, has conveyed to Respondents-Appellees that she asserts her right under 18 U.S.C. § 3771(a)(7) "to proceedings free from unreasonable delay."

two court-appointed psychiatrists, went through restoration proceedings, and was found not guilty by reason of insanity. *Id.* Dixon was released pending civil proceedings on January 5, 1978. *Id.*

The next day, Deana Bowdoin, a 21-year-old ASU student, was found dead in her apartment. *State v. Dixon (Dixon II)*, 226 Ariz. 545, 548, ¶¶ 2–3 (2011). She had been strangled with a belt and stabbed. *Id.* Investigators found semen on Deana's underwear but were unable to match the resulting DNA profile to any suspect. *Id.*
In 1985, Dixon violently sexually assaulted a 20-year-old student near the Northern Arizona University (NAU) campus in Flagstaff. *State v. Dixon (Dixon I)*, 153 Ariz. 151, 152 (1987). The NAU police department played a significant role in investigating the crime; NAU police responded to the victim's call, took the victim's statement, broadcast an "attempt to locate" call with the suspect's description, and, after Flagstaff police arrested Dixon, showed the victim a photographic lineup in which she identified Dixon and allowed her to view Dixon in person, during which she identified him. *Id.* at 152–53.

In 2001, a Tempe Police detective checked the DNA profile from the semen on Deana Bowdoin's underwear and found that it matched that of Dixon, whose DNA profile was in a national database as a result of his 1985 convictions. *Dixon II*, 226 Ariz. at 548, ¶ 4; *Dixon IV*, 932 F.3d at 796. Dixon had lived across the street from Deana at the time of the murder, and her friends and family knew of no previous contact between them. *Dixon II*, 226 Ariz. at 548–49, ¶ 4.

Dixon was charged with first degree murder. *Dixon II*, 226 Ariz. at 549, ¶ 5. Before trial, Dixon sought to represent himself because his appointed counsel would not file a motion he requested them to file. *Dixon IV*, 932 F.3d at 797. The issue Dixon sought to present "involves Dixon's theory that NAU officers lacked statutory authority to investigate the case because the NAU police force was not a legal entity in 1985. Therefore, because the NAU police lacked authority, he was wrongfully arrested, his 1985 conviction was 'fundamentally flawed,' and the DNA comparison made pursuant to his invalid conviction should be suppressed. ER (Dist. Ct. Order 5/10/22, at 8.) Dixon fired his court-appointed attorneys and represented himself at trial. *Id.* He filed a Motion to Suppress the DNA evidence based on his NAU police legal theory. *Id.*

Dixon was convicted of first-degree murder and sentenced to death. *Dixon II*, 226 Ariz. at 549, ¶ 5. Throughout the ensuing years, Dixon's attorneys argued that, among other things, his "perseveration" on the DNA suppression issue regarding the NAU police showed his lack of competency to waive counsel. The state and federal courts uniformly rejected this contention. In the habeas proceeding, the district court concluded that "Dixon's obsession with the NAU suppression motion was not so bizarre as to suggest incompetence," citing numerous decisions reaching that same conclusion with regard to other criminal defendants:

> "Criminal defendants often insist on asserting defenses with little basis in the law, particularly where, as here, there is substantial evidence of their guilt," but "adherence to bizarre legal theories" does not imply incompetence. *United States v. Jonassen*, 759 F.3d 653, 660 (7th Cir. 2014) (noting defendant's "persistent assertion of a sovereign-citizen defense"); *see United States v. Kerr*, 752 F.3d 206, 217–18

> (2d Cir.), *as amended* (June 18, 2014) ("Kerr's obsession with his defensive theories, his distrust of his attorneys, and his belligerent attitude were also not so bizarre as to require the district court to question his competency for a second time."). "[P]ersons of unquestioned competence have espoused ludicrous legal positions," *United States v. James*, 328 F.3d 953, 955 (7th Cir. 2003), "but the articulation of unusual legal beliefs is a far cry from incompetence." *United States v. Alden*, 527 F.3d 653, 659–60 (7th Cir. 2008) (explaining that defendant's "obsession with irrelevant issues and his paranoia and distrust of the criminal justice system" did not imply mental shortcomings requiring a competence hearing).

Dixon III, 2016 WL 1045355 at *9. The Ninth Circuit agreed, finding that the record in Dixon's capital case contained "no evidence of competency issues at any time throughout the course of these proceedings," and that the record demonstrated that at the time Dixon sought to represent himself he "understood the charges against him and the potential sentences, he was able to articulate his legal positions and respond to questions with appropriate answers, and that Dixon demonstrated rational behavior." *Id.* Significantly, the court stated that Dixon's interest in the DNA suppression issue "was not so bizarre or obscure as to suggest that Dixon lacked competence." *Id.* *See also*, *Dixon v. Shinn*, No. 22–99006, Slip. Op. at 11 (9th Cir. May 10, 2022).

B. State Court Competency to be Executed Proceedings.

On April 5, 2022, upon the State's motion and after Dixon concluded his direct appeal, first post-conviction relief, and federal habeas corpus proceedings, the Arizona Supreme Court issued a warrant of execution setting an execution date of May 11, 2022. On April 9, 2022, Dixon filed a motion for determination of competency under A.R.S. § 13–4022, contending that his very same focus on the

DNA suppression issue which failed to establish his lack of competency to waive counsel provided reasonable grounds for an examination into whether he lacks a rational understanding of the State's reason for seeking his execution. The superior court granted his request the same day it was filed, finding that Dixon's motion "satisfie[d] the minimum required showing that reasonable grounds exist for the requested examination and hearing, within the meaning of A.R.S. § 13–4022(C) and as otherwise required by *Ford v. Wainwright*," and set an evidentiary hearing.

Respondents did not concede that Dixon met the standard requiring a competency-for-execution hearing, but nonetheless proceeded with one on May 3, 2022. At the hearing, the competency court heard testimony from Dr. Amezcua-Patino and Dr. Vega, both of whom evaluated Dixon to determine whether he is competent to be executed. The court also received 39 exhibits admitted into evidence, including the relevant reports of Dr. Amezcua-Patino and Dr. Vega. As detailed thoroughly in the accompanying Brief in Opposition, after hearing from both experts, and reviewing all the evidence, the competency court found in a 6-page ruling issued on the night of the hearing, May 3, 2022, that Dixon is competent to be executed because he has a rational understanding of the reasons for his execution. Specifically, the competency court found that, although Dixon claimed no memory of the murder, "there is no evidence of dementia or a related impairment that would otherwise implicate an Eighth Amendment concern." Pinal County Superior Court Ruling, May 3, 2022. In light of the entirety of the record, the court concluded that Dixon failed to prove, either by clear and convincing or a

preponderance of the evidence, that his "mental state is so distorted by a mental illness that he lacks a rational understanding of the State's rationale for his execution." *Id.* at 5–6.

On the evening of May 7, 2022, *four days* after the superior court issued its decision, Dixon petitioned the Arizona Supreme Court for special action review of the competency court's decision. The Arizona Supreme Court denied review on the morning of May 9, 2022, and, rather than directly seek certiorari review in this Court, Dixon filed a petition for writ of habeas corpus in the district court. The district court issued its order denying habeas relief and denying Dixon's request for a stay of execution as moot on the morning of May 10. The district court also denied a certificate of appealability because "reasonable jurists could not debate its resolution of Dixon's competency claim." District Court decision at 25. However, on May 10, 2022, after Dixon filed a Notice of Appeal, the Ninth Circuit sua sponte granted a COA, ordered briefing, had oral argument, and affirmed the district court's judgment and denied Dixon's request for a stay of execution. The panel voted to deny the petition for panel rehearing. No judge requested a vote regarding whether to rehear the panel opinion en banc.

II. APPLICABLE LAW.

A. Legal standards under AEDPA.

Having chosen to seek federal habeas review of the state courts' competency rulings, Dixon's claims are subject to AEDPA. Under AEDPA, a federal court may not grant a writ of habeas corpus to a state prisoner on a claim adjudicated on the

merits in state court proceedings unless the state court's adjudication of the claim "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States," § 2254(d)(1), or "was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding," 2254(d)(2).

Under the "unreasonable application" prong of § 2254(d)(1), relief is available where a state court "identifies the correct governing legal rule from [the Supreme] Court's cases but unreasonably applies it to the facts of the particular . . . case" or "unreasonably extends a legal principle from [Supreme Court] precedent to a new context where it should not apply or unreasonably refuses to extend that principle to a new context where it should apply." *Williams v. Taylor (Terry)*, 529 U.S. 362, 407 (2000).

"Clearly established federal law" refers to the holdings, as opposed to dicta, of the Supreme Court's decisions at the time of the relevant state court decision. *Id.* at 412. "[C]ircuit precedent does not constitute 'clearly established Federal law'" and "cannot form the basis for habeas relief under AEDPA." *Parker v. Matthews*, 567 U.S. 37, 48–49 (2012); *see Carey v. Musladin*, 549 U.S. 70, 76–77 (2006). A reviewing court may, however, "look to circuit precedent to ascertain whether it has already held that the particular point in issue is clearly established by Supreme Court precedent." *Marshall v. Rodgers*, 569 U.S. 58, 63 (2013).

This Court has emphasized that under § 2254(d)(1) "an *unreasonable* application of federal law is different from an *incorrect* application of federal law." *Williams*

(Terry), 529 U.S. at 410, (O'Connor, J., concurring); *see Bell v. Cone*, 535 U.S. 685, 694 (2002). To obtain habeas relief, therefore, "a state prisoner must show that the state court's ruling on the claim being presented in federal court was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." *Harrington v. Richter*, 562 U.S. 86, 103 (2011); *see Shinn v. Kayer*, 141 S. Ct. 517, 526 (2020) (per curiam); *Yarborough v. Alvarado*, 541 U.S. 652, 664 (2004)). The burden is on Dixon to show "there was no reasonable basis for the state court to deny relief." *Richter*, 562 U.S. at 98. For the reasons stated in the accompanying Brief in Opposition to Dixon's Petition for Writ of Certiorari, the district court and Ninth Circuit have correctly applied AEDPA and affirmed the state courts' determinations of Dixon's competency to be executed under the Eighth Amendment.

III. DIXON'S REQUEST FOR A STAY SHOULD BE DENIED.

Because, as established in the Brief in Opposition, the Ninth Circuit and district court correctly denied Dixon's habeas petition and motion for stay, this Court should likewise deny his eleventh-hour request for a stay of execution.

"A stay is not a matter of right, even if irreparable injury might otherwise result." *Nken v. Holder*, 556 U.S. 418, 129 S. Ct. 1749, 1760 (2009) (quoting *Virginian R. Co. v. United States*, 272 U.S. 658, 672 (1926)). "The party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion." *Id*. at 1761 (citing cases). While a stay involves the exercise of judicial discretion, it is not unbridled discretion; legal principles govern the exercise of

discretion. *Id*. Moreover, "a stay of execution is an equitable remedy. It is not available as a matter of right, and equity must be sensitive to the State's strong interest in enforcing its criminal judgments[.]" *Hill v. McDonough*, 547 U.S. 573, 584 (2006). "Both the State and the victims of crime have an important interest in the timely enforcement of a sentence." *Id*. (citing *Calderon v. Thompson*, 523 U.S. 538, 556 (1998)). Equity does not tolerate last-minute abusive delays "in an attempt to manipulate the judicial process." *Nelson*, 541 U.S. at 649 (quoting *Gomez*). "Repetitive or piecemeal litigation presumably raises similar concerns" as litigation that is "speculative or filed too late in the day." *Hill*, 547 U.S. at 585. *See also Gomez v. United States Dist. Court for Northern Dist. of Cal.*, 503 U.S. 653, 654 (1992) (per curiam) (noting that the "last-minute nature of an application" or an applicant's "attempt at manipulation" of the judicial process may be grounds for denial of a stay).

To be entitled to a stay, a movant must demonstrate (1) that he is likely to succeed on the merits, (2) that he is likely to suffer irreparable harm, (3) that the balance of equities tips in his favor, and (4) that an injunction is in the public interest. *Ramirez v. Collier*, ___ U.S. ___, 142 S. Ct. 1264, 1275 (2022) (citing *Winter v. Natural Res. Def. Council, Inc*, 129 S. Ct. 365, 374, 376 (2008)); *McDonough*, 547 U.S. at 584; *Beardslee v. Woodford*, 395 F.3d 1064, 1067 (9th Cir. 2005). The burden of persuasion is on the movant, who must make a "clear showing." *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997 (per curiam).

These principles apply when a capital defendant asks a federal court to stay his pending execution. *Hill*, 547 U.S. at 584. A stay of execution is an equitable remedy and "equity must be sensitive to the State's strong interest in enforcing its criminal judgments without undue interference from the federal courts." *Id.* A court can consider "the last-minute nature of an application to stay execution in deciding whether to grant equitable relief." *Beardslee*, 395 F.3d at 1068 (quoting *Gomez v. United States District Court*, 503 U.S. 653, 654 (1991)). Thus, courts "must consider not only the likelihood of success on the merits and the relative harm to the parties, but also the extent to which the inmate has delayed unnecessarily in bringing the claim." *Id.* (quoting *Nelson v. Campbell*, 541 U.S. 637, 649–50 (2004)).

Moreover, last minute stays of execution—as Dixon requests here, mere hours before his scheduled execution—are particularly disfavored, as well-worn principles of equity attest. Late-breaking changes in position, last-minute claims arising from long-known facts, and other "attempt[s] at manipulation" can provide a sound basis for denying equitable relief in capital cases. *Ramirez*, ___ U.S. ___, 142 S. Ct. at 1282 (citing *Gomez v. United States Dist. Court for Northern Dist. of Cal.*, 503 U.S. 653, 654 (1992) (*per curiam*) ("A court may consider the last-minute nature of an application to stay execution in deciding whether to grant equitable relief."); see also *Hill*, 547 U.S. at 584 ("A court considering a stay must also apply a strong equitable presumption against the grant of a stay where a claim could have been brought at such a time as to allow consideration of the merits without requiring entry of a stay." (cleaned up)).

In the instant case, Dixon delayed four days from the competency court's decision finding him competent to be executed before seeking review in the Arizona Supreme Court. And, finding no success there, sought an innately lengthier habeas proceeding, rather than seeking review of his proffered Eighth Amendment claim immediately from this Court. Moreover, Dixon did not meet the *Ford/Panetti* (nor the Arizona statutory) standard for a competence-to-be-executed hearing in the first instance. This is illustrated by Ninth Circuit Judge Forrest's question to Dixon's counsel during oral argument on May 10, 2022, where, in response to counsel's argument criticizing the State's expert's methods, she pointed out that even without the State's expert's report and testimony, Dixon could not show he was incompetent to be executed. Moreover, Dixon's failure to demonstrate incompetence under the *Ford*/*Panetti* standard is especially highlighted by the fact that, as the Ninth Circuit noted, it had previously found that Dixon could not demonstrate that he was incompetent to waive counsel and represent himself at trial based on largely the same factual basis he now asserts shows he is incompetent to be executed. Slip. Op. at 11.

In other words, Dixon was previously found competent to waive counsel and represent himself at trial, requiring a higher standard of competency than to be executed. *See Godinez v. Moran*, 509 U.S. 389, 399 (1993) (competency standard for waiving the right to counsel is the same as the competency standard for standing trial); *Dusky v. United States*, 362 U.S. 402, 402 (1960) (defendant is competent to stand trial if he has sufficient present ability to consult with his lawyer with a

reasonable degree of rational understanding and a rational as well as factual understanding of the proceedings against him). Dixon has been afforded last-minute due process that his established competence did not justify. He has correctly been found competent to be executed by all state and federal courts. He cannot now use this last-minute effort for yet another layer of review to stay his lawfully-imposed, and long-delayed, sentence of execution. This Court should, like all previous courts, deny Dixon's request for a last-minute stay of execution.

CONCLUSION

The request for a stay should be denied.

Respectfully submitted,

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