

NO. 39,532-D

THE STATE OF TEXAS	§	IN THE 320 th DISTRICT COURT
	§	
VS.	§	IN AND FOR
	§	
JOHN LEZELL BALENTINE	§	POTTER COUNTY, TEXAS

ORDER SETTING EXECUTION DATE

On this date came on to be considered this cause for the purpose of fixing the execution date for Defendant JOHN LEZELL BALENTINE in accordance with the verdict and judgment rendered against him herein at a former term of this Court, to-wit: on the 19th day of April, 1999.

The Court takes notice of the pertinent prior proceedings in this case, to-wit: Defendant, John Lezell Balentine, was indicted by the Grand Jury of Potter County, Texas, charging him with the offense of capital murder, and a jury, upon his trial, returned a verdict into this Court on the 16th day of April, 1999, finding him guilty of the offense of capital murder. Said jury also returned a verdict into this Court on the 19th day of April, 1999, with findings on the issues submitted to the jury regarding the punishment to be assessed; and this Court, in accordance with said jury's findings, assessed his punishment at death. The judgment of this Court was reviewed on appeal by the Court of Criminal Appeals of Texas, and on April 3, 2002, the Court of Criminal Appeals of Texas in all things affirmed the judgment of this

Court. The Mandate of the Court of Criminal Appeals of Texas, commanding this Court to proceed with this judgment, was issued on the 29th day of April, 2002. On January 22, 2001 Defendant filed a state application for writ of habeas corpus, which the Court of Criminal Appeals of Texas, on December 4, 2002, denied. On December 1, 2003, Defendant John Lezell Balentine petitioned the United States District Court for the Northern District of Texas, for federal habeas corpus relief; that Court, on March 31, 2008, denied his petition. Defendant appealed the denial of federal habeas corpus relief to the United States Court of Appeals for the Fifth Circuit. That Court, on April 13, 2009, upheld the United States District Court's denial of habeas corpus relief. The United States Supreme Court on October 20, 2009 denied certiorari.

By its order of June 22, 2009, this Court set an execution date of September 30, 2009 for Defendant. On August 21, 2009, Defendant filed a subsequent application for writ of habeas corpus in the Court of Criminal Appeals of Texas, pursuant to article 11.071 section 5 of the Texas Code of Criminal Procedure. That court on September 22, 2009 dismissed the subsequent application.

On September 23, 2009, Defendant filed in the United States District Court a motion for relief under Federal Rule of Civil Procedure 60 (b); the subject of the Rule 60 (b) motion was the United States District Court's judgment denying habeas corpus relief. The United States District Court on September 28, 2009 denied Defendant's Rule 60 (b) motion. But, upon the granting of a certificate of appealability, this Court's order for Defendant's September 30, 2009 execution was stayed. The Fifth Circuit Court of Appeals on November 17, 2010 upheld the District Court's denial of Defendant's Rule 60 (b) motion. On June 13, 2011, Defendant filed in the Court of Criminal Appeals of Texas a subsequent application for writ of habeas corpus. That court on June 14, 2011 dismissed the subsequent application. Defendant then filed a petition for writ of certiorari in the United States Supreme Court. A stay of execution was granted pending the disposition of Defendant's petition. On March 26, 2012, the United States Supreme Court denied Defendant's petition for writ of certiorari, ending the stay of execution. Accordingly, this Court on April 13, 2012 set Defendant's execution date for August 22, 2012.

On July 12, 2012, Defendant filed in the United States District Court a subsequent Rule 60 (b) motion. That court on August 10, 2012, denied Defendant's Rule 60 (b) motion, but granted his request for a certificate of appealability. The United States Supreme Court granted Defendant a stay of execution pending disposition of his petition for writ of certiorari.

On June 3, 2013, the United States Supreme Court remanded the case to the Fifth Circuit Court of Appeals for further consideration in light of a new Supreme Court decision. In turn, the Fifth Circuit Court of Appeals on January 30, 2014 remanded the case to the United States District Court for the Northern District of Texas for further consideration in light of new decisional law. On May 21, 2018, the United States District Court again denied Defendant's Rule 60 (b) motion. The Fifth Circuit Court of Appeals, having granted a certificate of appealability, on August 3, 2021, affirmed the United States District Court's denial of Defendant's Rule 60 (b) motion.


On June 13, 2022 the United States Supreme Court denied Defendant's petition for writ of certiorari to the Fifth Circuit Court of Appeals. The stay of execution has now ended, and there is no order or stay of execution preventing this Court from proceeding with the judgment and sentence in this case.

Therefore, it is the ORDER of this Court that Defendant JOHN LEZELL BALENTINE, who having been adjudged to be guilty of capital murder, and whose punishment has been assessed at death in accordance with the findings of the jury and the judgment of this Court, shall after the hour of 6:00 P.M. on February 8, 2023, at the Institutional Division of the Texas Department of Criminal Justice, Huntsville, Texas, be put to death by an executioner designated by the Director of the Institutional Division of the Texas Department of Criminal Justice, who shall cause

a substance or substances in a lethal quantity to be intravenously injected into his body sufficient to cause his death, and until he is dead, such execution procedure to be determined and supervised by the Director of the Institutional Division of the Texas Department of Criminal Justice.

It is ORDERED that the Clerk of this Court shall issue a Warrant of Execution in accordance with this sentence, directed to the Director of the Institutional Division of the Texas Department of Criminal Justice, and deliver such warrant to the Sheriff of Potter County, Texas, to be by him delivered to the Director of the Institutional Division of the Texas Department of Criminal Justice, at Huntsville, Texas.

SIGNED AND ENTERED this 15th day of September, 2022.



Pamela Sirmon, Judge Presiding
320th District Court
Potter County, Texas