No. 22A399

IN THE

Supreme Court of the United States

TRACY LANE BEATTY,

Petitioner,

V.

BOBBY LUMPKIN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPLY IN SUPPORT OF APPLICATION FOR STAY OF EXECUTION

Mr. Beatty's execution is scheduled for November 9, 2022, after 6:00 p.m.

To the Honorable Samuel Alito, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Fifth Circuit:

Tracy Lane Beatty respectfully files this Reply in Support of Application for Stay of Execution. Many of Respondent's assertions are adequately addressed in Mr. Beatty's prior filings, therefore he will only briefly respond to three points raised by Respondent.

First, Respondent claims that Mr. Beatty's stay request "is beyond the power of a federal court to grant." BIO at 20–21. That is plainly incorrect. This Court certainly has the power to stay Mr. Beatty's execution to resolve the outcome of his petition, if necessary. *See Barefoot v. Estelle*, 463 U.S. 880, 893–94 (1983). And "'once a capital defendant invokes his § 3599 right, a federal court also has jurisdiction under [28 U.S.C.] § 2251 to enter a stay of execution' to make the defendant's § 3599 right effective." *Battaglia v. Stephens*, 824 F.3d 470, 475 (5th Cir. 2016) (quoting *Charles v. Stephens*, 612 F. App'x 214, 219 (5th Cir.) (alteration omitted) (quoting *McFarland v. Scott*, 512 U.S. 849, 858 (1994))).

Second, while a court can deny a stay of execution to a prisoner who raises their claim "too late in the day," that is not what occurred here. *See Hill v. McDonough*, 547 U.S. 573, 584 (2006). Respondent claims that Mr. Beatty is at fault for not pursuing mental health evaluations sooner. BIO at 17–23. Notably, Respondent (1) does not dispute that this is the first time he opposed the now-needed court order; (2) offers no reason why Mr. Beatty should have been aware of his changing practices regarding such order; and (3) does not contest that everyone else executed in Texas before Mr. Beatty was able to have unhandcuffed evaluations. Mr. Beatty should not be penalized for Respondent's shifting practices, which he had no reason to expect would be applied differently to him than all others executed in Texas. App. at 4.

Furthermore, Respondent continues to downplay the importance of Mr. Beatty's recent acute mental health crisis involving transport to a psychiatric unit in

May, auditory and visual hallucinations, and subsequently being prescribed medication to treat schizophrenia. App. at 2. Any reasonably competent counsel attempting to fulfil their § 3599 duties would seek mental health evaluations of their client's current functioning based on that episode—which is precisely what counsel did here. In Texas, both clemency and any proceedings regarding competency for execution are timely if filed twenty-one days prior to the execution date. Tex. Code Crim. Proc. 46.05(l-1) (requiring filing a competency to be executed motion twenty days before an execution to allow appellate review); 37 Tex. Admin. Code § 143.57(b) (requiring filing for clemency twenty-one days prior to the execution). Mr. Beatty pursued his evaluations with sufficient time to use that information for any remaining viable remedies, absent Respondent's obstruction and unexpectedly shifting practices and policies. App. at 3–4.

Third, Respondent suggests that Mr. Beatty has created a moving target regarding the purpose of his evaluations. BIO at 18. Not so. All of Mr. Beatty's filings have identified presenting this information in support of clemency as a justification for unhandcuffed evaluations. Clemency plainly falls under the scope of § 3599. *Harbison v. Bell*, 556 U.S. 180 (2009). Because Mr. Beatty's recent acute mental health crisis triggered concerns that he might be incompetent for execution under *Ford v. Wainwright*, 477 U.S. 399 (1986), he has mentioned *Ford* in explaining the basis for the requested evaluations and why they were timely sought. But he has never raised a *Ford* claim and certainly is not attempting to do so now.

Similarly, he has never raised a claim for relief under *Atkins v. Virginia*, 536 U.S. 304 (2002). Dr. Martell's professional opinion was that additional testing was warranted to determine whether Mr. Beatty was intellectually disabled, Petition at 5–6, which is plainly a relevant consideration to whether his sentence should be commuted. While in other litigation he did raise an access to court's claim regarding *Atkins*, his inability to take IQ testing makes further pursuit of that claim impossible despite the fact that it is still procedurally viable in state court. *See* Appellant's Brief at 22–23.

CONCLUSION AND PRAYER FOR RELIEF

Mr. Beatty asks that this Court grant this application and stay his execution.

Respectfully submitted this 9th day of November 2022,

JASON D. HAWKINS
Federal Public Defender

by

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