No. 23A855, 23-7041

In the
Supreme Court of the United States

Willie James Pye,
Petitioner,
v.

TYRONE OLIVER, Commissioner, Georgia Dep't of Corrections, CHRISTOPHER M. CARR, in his official capacity as the Attorney General of the State of Georgia, STATE BOARD OF PARDONS AND PAROLES, SHAWN EMMONS, Warden, Georgia Diagnostic and Classification Prison,
Respondents.

On Petition for Writ of Certiorari to the
United State Court of Appeals for the Eleventh Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

After knowing for a year that the court of appeals had denied his request for rehearing and his execution was imminent, Plaintiff Willie Pye, under the pretext of the Equal Protection and Due Process Clauses, asked the federal courts, only days before his scheduled execution, to confer on him, and thirty-four other death row inmates, the benefit of a negotiated Agreement between the Attorney General's Office and the capital defense bar that the state courts have specifically held excludes him as a party. And Pye never showed in the federal courts that the reasons that prompted the Agreement—multiple death row inmates available for execution during the COVID-19 pandemic—were currently applicable or hindered his counsel in preparing for his clemency and unspecified last-minute execution litigation.

Because the state courts had already determined that Pye was not entitled to the benefits of the Agreement, the court of appeals determined that Pye was not likely to succeed on the merits of his equal protection and due process claims and found his res judicata bars his claims. The court of appeals did not err in sua sponte deciding this affirmative defense, especially given that the courts were bound by the state court decision, and sovereign immunity would not have barred Pye from bringing his federal claims in the state court action. It has been nearly thirty years since Pye committed his crimes, there is nothing surprising in the State seeking his execution warrant after exhaustion of his appeals and he has not shown that more time was due to him to prepare for the known eventualities of a clemency proceeding and unspecified last-minute execution litigation.

1. Whether the court of appeals correctly determined that "[b]ecause res judicata likely bars Mr. Pye's claim in this action, we cannot say that he is substantially likely to succeed on the merits of this appeal, and thus he is not entitled to a stay of his execution."

STATEMENT

A. Facts of the Crimes

On November 16, 1993, Petitioner James Willie Pye, along with Chester Adams and Anthony Freeman, robbed, kidnapped, gang-raped, and murdered Alicia Lynn Yarbrough with a .22 pistol. *Pye v. State*, 269 Ga. 779, 780 n.1, 782-783 (1998). Alicia had been living with the father of her child and boyfriend, Charles Puckett, though she had previously been in a "sporadic romantic relationship" with Pye. *Id.* at 782. Puckett had signed the birth certificate of the child whom Pye claimed as his own. *Id.* This angered Pye. Meanwhile, Pye also heard that Puckett had recently collected a settlement check from a lawsuit. *Id.* Motivated by anger and greed, Pye set out to rob Puckett with Adams and Freeman. *Id.*

The three men drove to Griffin in Adams's car where "Pye bought a large, distinctive .22 pistol" "in a street transaction." *Id.* They then went to a party where a guest saw Pye with the gun. *Id.* Around midnight, Pye told the other two men, "it's time, let's do it," and they left the party and drove toward Puckett's home. *Id.* Upon arriving, "all of the men put on the ski masks which Pye had brought with him"; Pye and Adams additionally wore gloves. *Id.* They exited the vehicle and "approached Puckett's house on foot." *Id.* Puckett was not there but Alicia was home alone with her infant child. *Id.* "Pye tried to open a window and [Alicia] saw him and screamed." *Id.* "Pye ran around to the front door, kicked it in, and held [Alicia] at gunpoint." *Id.* "[T]here was no money in the house." *Id.* Still, the men took a ring and necklace from Alicia, kidnapped her, and left the baby home alone. *Id.*

"The men drove to a nearby motel where Pye rented a room using an alias." *Id.* There, they all took turns raping Alicia at gunpoint during which

time Pye also angrily exclaimed that "[Alicia] let Puckett sign [his] baby's birth certificate." *Id.* "After attempting to eliminate their fingerprints from the motel room, the three men and [Alicia] left in Adams'[s] car." *Id.* "Pye whispered [something] in Adams'[s] ear and Adams turned off onto a dirt road." *Id.* Pye ordered Alicia out of the car, made her lie face down, and shot her three times, killing her." *Id.* "Pye tossed the gloves, masks," and .22 pistol from the car as they drove away. *Id.*

A few hours after she was killed, the police found Alicia's body and recovered the tossed items. *Id.* at 783. "A hair found on one of the masks was consistent with [Alicia's] hair, and a ballistics expert determined that there was a 90 percent probability that a bullet found in [Alicia's] body had been fired by the .22." *Id.* Semen was also found in Alicia's body and "DNA taken from the semen matched Pye's DNA." *Id.* Later that day, Pye told the police that "he had not seen [Alicia] in the last two weeks." *Id.* However, Freeman later confessed to the crimes as outlined above. *Id.*

B. Proceedings Below

1. Trial and Direct Appeal Proceedings

On February 7, 1994, Pye was indicted by a Spalding County grand jury for malice murder, felony murder, kidnapping with bodily injury, armed robbery, burglary, rape, and aggravated sodomy. *Id.* at 780 n.1. Pye's trial began on May 28, 1996 and on June 6, 1996, the jury found him guilty on all counts of the indictment except felony murder and aggravated sodomy. *Id.* Following the sentencing phase of trial, on June 7, 1996, the jury recommended a death sentence for the malice murder, "finding as four separate statutory aggravating circumstances." *Id.* at 779-780, 780 n.1. The trial court ordered the death sentence for the malice murder. *Id.* at 780 n.1.

For the remaining counts, it "imposed three additional life sentences plus twenty years," all to be served consecutively. *Id.*

On September 21, 1998, the Georgia Supreme Court affirmed all of Pye's convictions and sentences. *Id.* at 789; *cert. denied Pye v. Georgia*, 526 U.S. 1118 (1999).

2. State Habeas Proceedings

Pye filed his state habeas petition on February 4, 2000. On January 30, 2012, the state habeas court issued an order denying Pye's petition. The Georgia Supreme Court denied Pye's application for a certificate of probable cause to appeal the state habeas court's order. Pye did not file a petition for writ of certiorari review in this Court.

3. Federal Habeas Proceedings

Pye filed his federal habeas petition on July 24, 2013. The district court denied relief for Pye's claims on January 22, 2018. Pye appealed to this Court and a panel of the Court granted Pye federal habeas relief on his sentencing phase ineffective-assistance claim on April 27, 2021. *See Pye v. Warden, Ga. Diagnostic Prison*, 853 F. App'x 548 (11th Cir. 2021). The Warden petitioned for rehearing en banc, and the Court vacated the panel opinion and granted the request on September 1, 2021. *Pye v. Warden*, 9 F.4th 1372 (11th Cir. 2021). The en banc Court affirmed the district court's decision on October 4, 2022 and remanded to the panel for consideration of an outstanding claim. *Pye v. Warden, Ga. Diagnostic Prison*, 50 F.4th 1025, 1030 (11th Cir. 2022). The panel denied relief, and this Court denied Pye's final petition for rehearing on March 9, 2023. *Pye v. Warden*, No. 18-12147, 2023 U.S. App. LEXIS 1897 (11th Cir. Jan. 25, 2023); Def. Att. A. This Court

denied certiorari review on October 30, 2023. *Pye v. Emmons*, 144 S. Ct. 344 (2023).

4. Execution Warrant

On February 29, 2024, the Griffin County Judicial Circuit District Attorney obtained an order setting Pye's execution for March 20, 2024. Doc. 8-2. Pursuant to OCGA § 17-10-40 (b) the "time period for the execution fixed by the judge shall commence not less than ten nor more than 20 days from the date of the order." Pye was given the full 20 days under the statute. *See* Doc. 8-2.

5. Fulton County Proceedings

One day prior to the State of Georgia obtaining the execution warrant, on February 28, 2024, Pye moved to intervene in an underlying breach of contract action between the Federal Defender and Defendants (the "Federal Defender Action").[1] *See* Doc. 8-3 at 2-7. This case concerned the Agreement between the Attorney General's Office and the capital defense bar that represents all death row inmates. Briefly, in early 2021, the Attorney General and the capital defense bar negotiated ways to handle executions during the COVID-19 pandemic. In general terms, the Attorney General agreed to postpone executions until the judicial emergency was lifted, COVID-19 vaccines were available, and visitation restrictions for death-eligible inmates were lifted. *See* Doc. 1-1 at 4. The Agreement, however, applied only to a limited subset of death-eligible prisoners: "This agreement applies only to death-sentenced prisoners whose petition for rehearing or

[1] That case is styled *Federal Defender Program, Inc. et al. v. State of Georgia et al.*, Civil Action Number 2022CV364429.

rehearing en banc was denied by the Eleventh Circuit while the State of Georgia remained under judicial emergency order. . . ." *Id.* at 5-6. Currently the Attorney General's Office is enjoined from seeking a death warrant from the district attorneys based on this Agreement until litigation has shown that the conditions of the Agreement have been met. [2] *See State of Ga. v. Fed. Def. Program, Inc.*, 315 Ga. 319, 319 (2022).

On March 4, 2024, the Fulton County Superior Court denied Pye's motion to intervene on the ground that "between the plain language of the agreement itself and the Supreme Court's opinion, this Court must agree with Defendants' position that the agreement 'applies only to those inmates whose petition for rehearing or rehearing en banc was denied by the Eleventh Circuit before June 30, 2021.'" Doc. 8-2 at 5-6. Pye obtained a certificate of immediate review to appeal the court's denial of his motion to intervene and filed his application discretionary appeal on March 12, 2024. *See* Doc. 8-4. The Georgia Supreme Court denied the application on March 14, 2024.

On March 5, 2024, Pye filed a complaint in the Superior Court of Fulton County alleging he was a third-party beneficiary the above-mentioned agreement between Defendants and the Federal Defender Program, Inc. *See* Doc. 8-5. On March 13, 2024, the court granted the Defendants' motion to

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[2] Pye references mediation and negotiations that have occurred in Federal Defender case. Brief at 20. He states that "the Attorney General unilaterally *informed counsel for the Federal Defender that further settlement negotiations are not worthwhile*." *Id.* (emphasis added). If this is not a violation of the letter of the confidentiality agreement that applies to all mediation and negotiations in that case, it certainly is a violation of the spirit of it. Moreover, it implies that the Attorney General somehow acted in bad faith, and because the communications are confidential, does not afford the Attorney General the opportunity to respond to this implication. Finally, Pye is not a party to the Federal Defender case.

dismiss the complaint. *See* Doc. 8-8. Defendant filed his application for discretionary appeal in the Georgia Supreme Court on March 17, 2024, which was denied on March 18, 2024.

6. Current 42 U.S.C. § 1983 Proceedings

Pye filed his 42 U.S.C. § 1983 complaint alleging a violation of his equal protection and due process rights in the district court on March 11, 2024. *See* Doc. 1. Pye requested an injunction and a temporary restraining order to stay his execution set for March 20, 2024. After briefing and a hearing, the district court dismissed Pye's complaint for failure to state a claim and denied his request for an injunction and a TRO on March 15, 2024. Doc. 12. On the same day, Pye filed his notice of appeal in the Eleventh Circuit Court of Appeals. The panel requested supplemental briefing on:

> The parties are directed to submit supplemental letter briefs addressing whether in light of the Georgia Supreme Court's order yesterday denying discretionary review of the dismissal of his breach of contract claim, appellant Willie James Pye's claims in this action are barred by the doctrine of res judicata. See *Muhammad v. Sec'y, Fla. Dep't of Corr.*, 739 F.3d 683, 688 (11th Cir. 2014)."

The parties briefed the issue and, the court of appeals affirmed the district court's decision and denied Pye's request for a stay of execution on March 19, 2024.

REASONS FOR DENYING THE PETITION

I. The court of appeals correctly determined that Pye was unlikely to succeed on the merits of his claims because of the doctrine of res judicata.

Pye sought relief in federal court under 42 U.S.C. § 1983 alleging that the State's obtainment of his execution warrant violated his rights under

both the Equal Protection and Due Process Clauses. These claims were premised on his assertion that Pye was entitled to the benefits of the Agreement negotiated between the Georgia Attorney General's Office and the capital defense bar and that his preclusion was based on arbitrary action by the Defendants. The court of appeals determined that it was likely that Pye's claims were barred by the doctrine of res judicata because there was a state court decision that precluded Pye from being a beneficiary of the Agreement because he was excluded by specific terms in the Agreement.

The court of appeals did not err in making this decision. Pye first argues that the court of appeals was wrong to invoke the doctrine of res judicate sua sponte. However, the Eleventh Circuit has done so in the past. *See Akanthos Capital Mgmt., LLC v. Atlanticus Holdings Corp.*, 734 F.3d 1269, 1272 (11th Cir. 2013) ("Even if the noteholders had not raised their defense of res judicata, we would sua sponte raise the issue.") (emphasis in original). Additionally, Pye admits that if he has failed to show a prima facie case of a likelihood of success on the merits, then the court of appeals did not err in sua sponte addressing res judicata. The district court has already determined that Pye was not likely to succeed on the merits of his equal protection and due process claims and there is nothing to suggest in the court of appeals' order that it did not first consider whether Pye had made a prima facie showing.

Moreover, the Defendants had argued to both the district court and the court of appeals that the state court's determination that Pye was not a party to the Agreement bound the federal courts. *See Winn-Dixie Stores, Inc. v. Dolgencorp, LLC*, 881 F.3d 835, 848 (11th Cir. 2018) ("State law is what the state appellate courts say it is, and we are bound to apply a decision of a state

appellate court about state law even if we think that decision is wrong."). And argued that any finding by a federal court that Pye is entitled to the conditions in the Agreement, would conflict with state law that Pye is not a party to the Agreement.

Next, Pye argues that the court of appeals was wrong to reject his argument that "that the state courts would have lacked jurisdiction over his federal constitutional claims due to sovereign immunity." But it is Pye who misinterprets Georgia law. Pye argues that determination was contrary to *Lovell v. Raffensperger*, 318 Ga. 48 (2024) because the state court would have lacked jurisdiction to hear claims under 42 U.S.C. § 1983. Pye is wrong. All the Georgia Supreme Court stated in *Lovell* was that the plaintiff's action was barred because the "actions were not brought exclusively against the State and in the name of the State of Georgia or exclusively against the counties and in the name of such counties," which failed to comply with Article I, Section II, Paragraph V(b)(2) of the Georgia Constitution. *Lovell*, 318 Ga. at 53. The opinion does not hold, or even mention, § 1983 claims. In fact, it does not state what the plaintiff's claims were other than she sought declaratory relief.

Moreover, *Kuhlman v. State*, 317 Ga. 232, 235 (2023) holds that "Article I, Section II, Paragraph V (b) (1) of the Georgia Constitution of 1983 waives sovereign immunity for certain actions seeking declaratory relief for alleged "acts" of state boards (as well as many other types of governmental entities, officials, and employees) that are 'outside the scope of lawful authority or in violation of the laws or the Constitution of this state or the Constitution of the United States.'" Consequently, under clear state law, Pye could have amended his breach of contract complaint to include his § 1983 claims.

Most importantly, as correctly held by the court of appeals, and not shown to be incorrect by Pye;

> in such actions a state-law defense of sovereign immunity is available to a defendant only when such a defense would have been available if the action had been brought in a federal forum. See id. at 359, 369–72. And an immunity defense was unavailable to the Attorney General in Mr. Pye's § 1983 action for injunctive relief in federal court. See Summit Med. Assocs., P.C. v. Pryor, 180 F.3d 1326, 1336 (11th Cir. 1999) ("Under the doctrine of Ex parte Young, 209 U.S. 123 (1908), . . . there is a long and well-recognized exception to [Eleventh Amendment immunity for claims against state officials] for suits . . . seeking prospective equitable relief to end continuing violations of federal law." (emphasis omitted)).

Thus, the court of appeals did not err in holding that that sovereign immunity would not have barred Pye's claims

Looking at that the court of appeal's res judicata ruling, as correctly noted by the court of appeals, "to give res judicata effect to a state court judgment," a federal court "'must apply the res judicata principles of the law of the state whose decision is set up as a bar to further litigation.'" *Green v. Jefferson Cty. Comm'n*, 563 F.3d 1243, 1252 (11th Cir. 2009) (quoting *Kizzire v. Baptist Health System, Inc.*, 441 F.3d 1306, 1308-09 (11th Cir. 2006)). In Georgia, "[t]he doctrine of res judicata prevents 'the re-litigation of all claims which have already been adjudicated, or which could have been adjudicated, between identical parties or their privies in identical causes of action.'" *Rockdale Cty. v. U.S. Enters.*, 312 Ga. 752, 758 (2021) (citing *Bostick v. CMM Properties, Inc.*, 297 Ga. 55, 57 (2015) (quotation marks omitted). [T]hree prerequisites must be satisfied before res judicata applies — (1) identity of the cause of action, (2) identity of the parties or their privies, and (3) previous adjudication on the merits by a court of competent jurisdiction." *Coen v. CDC*

Software Corp., 304 Ga. 105, 112 (2018). *See also* OCGA § 9-12-40 ("A judgment of a court of competent jurisdiction shall be conclusive between the same parties and their privies as to all matters put in issue or which under the rules of law might have been put in issue in the cause wherein the judgment was rendered until the judgment is reversed or set aside.").

Regarding the second and third requirements, the court of appeals correctly held: "Here, there is no doubt that the two lawsuits involved the same parties or their privies. And the superior court order dismissing Mr. Pye's complaint, which the Georgia Supreme Court declined to review, qualifies as an adjudication on the merits by a court of competent jurisdiction."

The court of appeals then turned its attention to the first requirement—same cause of action. The Georgia Supreme Court has "explained that 'cause of action' means 'the entire set of facts which give rise to an enforceable claim[,] with special attention given to the wrong alleged.'" *Rockdale, supra*, at 758-59 (2021) (citing *Coen*, 304 Ga. at 112) (quotation marks omitted). As pointed out by the court of appeals, "[t]he Georgia Supreme Court has cautioned that 'causes of action should not be conflated with theories of recovery,' and 'just because the theory of recovery is different in consecutive lawsuits does not automatically mean that there is no identity of cause of action.'" Quoting *Coen, supra*, at 674 n.7.

The court of appeals correctly determined that Pye's "federal and state lawsuits both arise out of the same operative facts." Looking at the complaint and brief in support of a stay of his execution filed in the Superior Court of Fulton County and Pye's complaint filed in the Northern District of Georgia, there is the same nucleus of facts. In both actions, Pye sets out the

history that led to the Agreement at issue here, the terms of the Agreement, and why Pye should be included under the Agreement. In the pleadings in support of both the state federal suits, Pye claims that his attorneys "cannot adequately represent their clients under the conditions that first arose as a result of the pandemic." In both actions, Pye asserts near identical (if not identical) reasons why counsel need more time to prepare for clemency and execution litigation. *See* In both actions, Pye argues that he should be a beneficiary to the Agreement, albeit in the federal action he argues he is "similarly situated" to the parties covered by the Agreement in order to assert his equal protection claim. And in both actions Pye asks for the same relief, that the courts grant him "injunctive relief to enjoin Defendants from proceeding with [his] execution [] until all conditions in the Agreement have been satisfied and subject to the same notice requirements contained in the Agreement."

While the claims asserted may be different, as pointed out by the court of appeals, the underlying cause of action is the same—that Pye should have the benefits of the Agreement and receive a stay of execution. The state court denied Pye's request to be included as a beneficiary to the agreement. Both Pye's equal protection and due process claim turn on his allegation that the State arbitrarily excluded him from the Agreement based on the rehearing requirement. In order for the federal courts to find Pye is likely to succeed on the merits of his claims, the court would have to find arbitrary action by the State in not including him in the Agreement and seeking his execution warrant. But such a decision would be squarely foreclosed by the state court ruling that Pye is excluded from the Agreement based on the rehearing requirement.

In sum, the relief Pye sought, a stay of his execution turned on whether he was entitled to the benefits of the Agreement, which the state court had already determined he did not. The court appeals correctly concluded that "After carefully considering Georgia law, we conclude that it is substantially likely that the lawsuits involved the same cause of action." And Pye has never explained how the federal courts could determine he suffered his alleged constitutional violations in a manner that was not foreclosed by state law.

CONCLUSION

For the reasons set out above, this Court should deny the petition and deny Pye's request for a stay of his execution.

Respectfully submitted.

/s/ *Sabrina D. Graham*

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CERTIFICATE OF SERVICE

I hereby certify that on March 20, 2024, I served this brief on all parties required to be served by mailing a copy of the brief to be delivered via email, addressed as follows:

/s/ *Sabrina D. Graham*
Sabrina D. Graham