No. 23A63
No. 23-5147

In the Supreme Court of the United States

JOHNNY JOHNSON, PETITIONER,

v.

DAVID VANDERGRIFF, RESPONDENT.

On Petition for a Writ of Certiorari to the Supreme Court of Missouri

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SUGGESTIONS IN OPPOSITION TO MOTION FOR STAY OF EXECUTION

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Reasons to Deny Johnson's Request for a Stay

A stay of execution is an equitable remedy that is not available as a matter of right. *Hill v. McDonough,* 547 U.S. 573, 584 (2006). Johnson's request for a stay must meet the standard required for all other stay applications, including a showing of significant possibility of success on the merits. *Id*. In considering Johnson's request, this Court must 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." *Id.* (citing *Nelson v. Campbell,* 541 U.S. 637, 650 (2004)). The "last-minute nature of an application" may be reason enough to deny a stay. *Id.* When considering a stay request, a court should consider: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Hilton v. Braunskill,* 481 U.S. 770, 776 (1987). Johnson must meet all four factors by a "clear showing." *Nelson*, 541 U.S. at 650; *Hill*, 547 U.S. at 584.

Johnson's petition fails to raise any substantial ground for relief, and his stay request fails on all four traditional stay factors.

I. Johnson has delayed in bringing this case, and especially in asking for this stay.

Johnson contends that he has not delayed in bringing his petition for certiorari, but Johnson is wrong. Johnson's state-court habeas petition was denied on April 19, 2023. The Missouri Supreme Court issued its execution warrant for Johnson on the same day and set the execution 104 days in the future: August 1, 2023. Johnson then waited a full 90 days before filing his petition for certiorari review. On top of all that, Johnson waited another six days before filing his stay application. Johnson offers no plausible explanation for waiting 96 of the 104 days before filing this application for stay. App. at 12–13. The only plausible explanation is that Johnson constructed and carried out a strategy of intentional delay. That is an independent and adequate ground to deny a stay of execution. *Hill,* 547 U.S. at 584. Johnson contends that his delay is really the State's fault. App. at 12–13. Johnson is wrong; the state court rejected his *Brady*[1] claim. But importantly, Johnson does not—and cannot—argue the delay between the conclusion of state-court review on April 19 and the filing of his certiorari petition on July 18 or the filing of his stay application on July 24 is the fault of anyone but himself.

[1] *Brady v. Maryland*, 373 U.S. 83 (1963).

II. Johnson cannot show a strong possibility of success on the merits.

Johnson has no possibility of success because, as discussed in the brief in opposition, the decision below rests on state-law grounds (Br. in Opp. at 18–19); because the "evidence" Johnson claims was suppressed was either inadmissible at trial or relates to events that occurred *after* trial (Br. in Opp. at 19–21); and because Johnson is asking the Court to extend *Brady* such that it becomes a new rule, so Johnson cannot receive the benefit of the new rule he proposes (Br. in Opp. at 16–17).

Johnson's allegations of suppressed "evidence" fall into two categories: (1) "evidence" of Dr. Becker's pretrial finding of guilt for driving while intoxicated; and (2) "evidence" of post-trial misconduct by Dr. Becker and Dr. English. Dr. Becker did not testify at trial. Under Missouri law, Dr. Becker's pretrial finding of guilt was, therefore, inadmissible at the trial under Missouri law. Johnson does not even dispute that point. That means the Supreme Court of Missouri's decision was based on state-law grounds and this Court does not have jurisdiction. *Coleman v. Thompson*, 501 U.S. 722, 729 (1991). Even if the claim was reviewable, this Court has held that the suppression of inadmissible evidence is not a violation of *Brady*. *Wood v. Bartholomew*, 516 U.S. 1, 8 (1995); *see Kyles v. Whitley*, 514 U.S. 419, 434 (1995); *see also United States v. Agurs*, 427 U.S. 97, 104 (1976); *United States v. Bagley*, 473 U.S. 667, 675 (1985).

As to the "evidence" of events that occurred completely after the trial, *Brady* does not apply because *Brady* is a *trial* right. *Brady*, 373 U.S. at 87; *District Attorney's Office for Third Jud. Dist. v. Osborne*, 557 U.S. 52, 69 (2009). Accordingly, Johnson's claims are meritless under current law. And Johnson's request for the Court to dramatically expand *Brady* to cover inadmissible "evidence" and to extend to evidence of post-trial events constitutes a request for a new rule of criminal procedure. Such rules are not retroactive, so Johnson cannot receive relief. *Edwards v. Vannoy*, 141 S. Ct. 1547, 1551 (2021) (citing *Teague v. Lane*, 489 U.S. 288, 310 (1989)).

III. Denial of a stay will not injure Johnson because his claim is meritless, and a stay is not in the public interest.

Johnson will not be injured without a stay. Johnson abducted, attempted to rape, and murdered six-year-old Casey Williamson twenty years ago this month, and he has had ample time to seek review of his convictions in state and federal court. As this Court knows, "the long delays that now typically occur between the time an offender is sentenced to death and his execution are excessive." *Bucklew v. Precythe,* 139 S. Ct. 1112, 1134 (2019). This Court's role is to ensure that Johnson's challenges to his sentence are decided "fairly and expeditiously," so he has no interest in further delay while the Court considers his petition. *Id.* Johnson's last-minute request for this Court to radically expand *Brady* and its progeny is nothing more than a delay tactic. Johnson's

claim is meritless; he has no legitimate interest in delaying the lawful execution of his sentence.

A stay would also irreparably harm both the State and the family of Johnson's victim. This Court has repeatedly recognized the States' important interests in enforcing lawful criminal judgments without federal interference. "The power to convict and punish criminals lies at the heart of the States' 'residuary and inviolable sovereignty.'" *Shinn v. Ramirez*, 142 S. Ct. 1718, 1730 (2022) (quoting The Federalist No. 39, p. 245 (J. Madison) (Clinton Rossiter ed. 1961)); *see also Gamble v. United States*, 139 S. Ct. 1960, 1968–69 (2019). "Thus, [t]he States possess primary authority for defining and enforcing the criminal law and for adjudicating constitutional challenges to state convictions." *Id.* (quotations and citations omitted). Federal intervention "disturbs the State's significant interest in repose for concluded litigation" and it "undermines the States' investment in their criminal trials." *Id.* (quotations and citations omitted). "Only with real finality can the victims of crime move forward knowing the moral judgment will be carried out." *Id.* (quoting *Calderon v. Thompson*, 523 U.S. 538, 556 (1998)). "To unsettle these expectations is to inflict a profound injury to the powerful and legitimate interest in punishing the guilty, an interest shared by the State and the victims of crime alike." *Id.* (quoting *Calderon*, 523 U.S. at 556).

Johnson has exhausted his opportunities for federal review and his convictions and sentences have been repeatedly upheld. There is no basis to delay justice. The surviving victims of Johnson's crimes have waited long enough for justice, and every day longer that they must wait is a day they are denied the chance to finally make peace with their loss. *Id.* This Court should deny Johnson's stay application.

Conclusion

This Court should deny the application for stay of execution.

Respectfully submitted,

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