

No. 24-_____

In the Supreme Court of the United States

WILLIE JAMES PYE,

Petitioner,

v.

SHAWN EMMONS, Warden,
Georgia Diagnostic & Classification Prison

Respondents.

**Petition for a Writ of Certiorari
to the Supreme Court of Georgia**

MOTION FOR A STAY OF EXECUTION PENDING CERTIORARI

CAPITAL CASE: EXECUTION SCHEDULED TODAY, MARCH 20, 2024

TO: THE HONORABLE CLARENCE THOMAS, ASSOCIATE JUSTICE,
SUPREME COURT OF THE UNITED STATES

Petitioner Willie James Pye, a death-sentenced prisoner in the State of Georgia, respectfully requests that this Court stay his execution, currently scheduled for 7:00 p.m. **TODAY**, March 20, 2024, until further Order of this Court, in order to permit the consideration and disposition of his petition for writ of certiorari to the Georgia Supreme Court, filed concurrently with this motion.

JURISDICTION

Mr. Pye invokes this Court's jurisdiction to stay his execution under 28 U.S.C. § 1257 (a), 28 U.S.C. § 2102(f) and Rule 23 of the Rules of the Supreme Court of the United States.

PROCEDURAL HISTORY

Mr. Pye was convicted of malice murder, kidnaping with bodily injury, armed robbery and rape in the Superior Court of Spalding County, Georgia on June 4, 1996, and sentenced to death on June 7. The execution of intellectually disabled offenders was prohibited by Georgia law, but defense counsel did not investigate any mental health issues and no mental health evidence was presented at trial. Mr. Pye's conviction and death sentence were affirmed by this Court on direct appeal, *Pye v. State*, 269 Ga. 779, 505 S.E.2d 4 (1998).

Mr. Pye then filed a petition for writ of habeas corpus in the Superior Court of Butts County on February 4, 2000, and an evidentiary hearing was held on May 11-13, 2009. The state court signed verbatim the Respondent's proposed order and denied the petition on January 30, 2012.

Mr. Pye next filed a petition for federal habeas corpus relief in the United States District Court for the Northern District of Georgia pursuant to 28 U.S.C. § 2254. The federal habeas court denied relief on each of Mr. Pye's claims on January 22, 2018.

Mr. Pye appealed to the Court of Appeals for the Eleventh Circuit and on April 27, 2021, following briefing and oral argument, a panel of the court reversed the judgment of the district court and granted relief on Mr. Pye's ineffective assistance of counsel claim, and vacated his death sentence. *Pye v. Warden*, GDCP, 853 Fed.Appx. 548 (11th Cir. 2021)(unpublished). On September 1, 2021, on Respondent's motion, the court granted *en banc* review, and on October 4, 2022, the *en banc* court overturned the panel decision and affirmed the district court's denial

of habeas relief. The United States Supreme Court denied Mr. Pye’s petition for certiorari on October 30, 2023. *Pye v. Emmons*, 144 S.Ct. 344 (2023).

Mr. Pye filed a petition for writ of habeas corpus in the Superior Court of Butts County on March 18, 2024. That petition was denied March 20, 2024. The Georgia Supreme Court denied review on March 20, 2024.

REASONS FOR GRANTING THE STAY

Mr. Pye is scheduled for execution now.

In order to receive a stay of execution, a petitioner must show: 1) irreparable injury if no stay is granted; 2) a “reasonable probability that four (4) members of the Court will consider the issue [presented] sufficiently meritorious to grant certiorari,” *Graves v. Burnes*, 405 U.S. 1201 (1972) (Powell, Circuit Justice), or a reasonable probability that a plurality of the Court would grant relief on an original habeas petition; and 3) a likelihood of success on the merits. *See Barefoot v. Estelle*, 463 U.S. 880, 893 (1983); *see also Fare v. Michael C.*, 439 U.S. 1310 (1978) (Rehnquist, Circuit Justice). Mr. Pye meets this standard.

A. Irreparable Injury

If this Court does not grant a stay, Mr. Pye will be executed at 7:00 p.m. tonight. This clearly constitutes irreparable injury. *See, e.g., Evans v. Bennett*, 440 U.S. 1301, 1306 (1979) (Rehnquist, C. J.) (granting a stay of execution and noting the “obvious irreversible nature of the death penalty”); *O’Bryan v. Estelle*, 691 F.2d 706, 708 (5th Cir. 1982) (the “irreversible nature of the death penalty” constitutes irreparable injury and weighs heavily in favor of granting a stay).

Further, Mr. Pye’s claims address whether his life will be unconstitutionally

truncated because Defendants plan to executed him despite the fact that he is intellectually disabled, and thus categorically precluded from being executed. The potential injury is his death.

B. Probability That This Court Will Grant Certiorari.

As outlined in Mr. Pye's accompanying Petition for Writ of *Certiorari*, he is likely to obtain a grant of *certiorari*. He has raised the issues of whether the State can execute a person who is intellectually disabled by all clinical standards and can the State impose a burden of proof so onerous that it effectively eviscerates a substantive constitutional right.

C. Likelihood of Success on the Merits.

Mr. Pye is entitled to a stay because he is able to show both that there is a reasonable likelihood that this Court will grant *certiorari* on the basis of the question presented, and that Mr. Pye will ultimately prevail on the merits of his underlying Eighth and Fourteenth Amendment Claims.

First, Mr. Pye is intellectually disabled. This is a categorical ban to execution. All experts agree that his IQ scores place him in the range of the intellectually disabled. Testing by experts for both the state and the defense show that he has significant adaptive deficits. This Court has held that the execution of an intellectually disabled individual violates the Eighth Amendment. Mr. Pye is likely to succeed on the merits.

Mr. Pye and all those on death row retain a fundamental right to life under the Fourteenth Amendment to the United States Constitution. *See Ohio Adult*

Parole Auth. v. Woodard, 523 U.S. 272, 288 (1998) (O’Connor, J., concurring in part and concurring in the judgment) (“A prisoner under a death sentence remains a living person and consequently has an interest in his life.”). Defendant’s decision to execute Mr. Pye despite the fact that he is intellectually disabled, undeniably constitutes an infringement of Mr. Pye’s fundamental right to continue living and is subject to strict scrutiny.

Alternatively, Mr. Pye’s Eighth and Fourteenth Amendment claims warrant, at least, some form of heightened scrutiny under *M.L.B. v. S.L.J.*, 519 U.S. 102 (1996). In *M.L.B.*, this Court assessed a state’s civil appeal fee requirements, a scheme normally assessed only for rationality. The Court nevertheless held that a case “involving the State’s authority to sever permanently a parent-child bond, demands the close consideration the Court has long required when a family association so undeniably important is at stake.” *Id.* at 116–17. Here, where the stakes are even higher than *M.L.B.*, some form of heightened scrutiny is likewise demanded.

“[W]hen a State opts to act in a field where its action has significant discretionary elements, it must nonetheless act in accord with the dictates of the Constitution—and, in particular, in accord with the Due Process Clause.” *Evitts v. Lucey*, 469 U.S. 387, 401 (1985). *See also Morrissey v. Brewer*, 408 U.S. 471, 481-84 (1972) (the State has great discretion in setting policy as to parole decisions, but must nonetheless make those decision in accordance with the Due Process Clause); *Pennsylvania v. Finley*, 481 U.S. 551, 557 (1987) (analyzing whether the state’s

postconviction proceedings comported with “the fundamental fairness mandated by the Due Process Clause”); *Woodard*, 523 U.S. at 288 (O’Connor, J., concurring) (concluding that procedural safeguards do apply in clemency proceedings); *Swarthout v. Cooke*, 562 U.S. 216, 220 (2011) (“When, however, a State creates a liberty interest, the Due Process Clause requires fair procedures for its vindication—and federal courts will review the application of those constitutionally required procedures.”).

Here, Mr. Pye clearly has established such a liberty interest in his clemency proceedings and pre-execution litigation. *See, e.g., Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 272, 288 (1998) (O’Connor, J., concurring) (“I do not, however, agree with the suggestion in the principal opinion that, because clemency is committed to the discretion of the executive, the Due Process Clause provides no constitutional safeguards.”); *Yates v. Aiken*, 484 U.S. 211, 218 (1988) (post-conviction proceedings are subject to due process protections).

In sum, Mr. Pye has demonstrated a probability that this Court will grant certiorari on the question presented by his accompanying petition, and a likelihood of success on the merits of his claims. A stay is necessary and appropriate.

CONCLUSION

Wherefore, for the reasons set forth above and in Mr. Pye’s concurrently filed petition for certiorari, this Motion for a Stay of Execution should be granted.

Respectfully submitted this, the 20th day of March, 2024.

/s/ Gretchen M. Stork

*Gretchen M. Stork

Nathan A. Potek

Federal Defender Program, Inc.

101 Marietta Street, Suite 1500

Atlanta, Georgia 30303

404-688-7530

(fax) 404-688-0768

Nathan_Potek@FD.org

[Gretchen Stork@FD.org](mailto:Gretchen_Stork@FD.org)

*Counsel of Record

COUNSEL FOR WILLIE PYE

CERTIFICATE OF SERVICE

I hereby certify that on March 20, 2024, a true and correct copy of the foregoing Petitioner’s Motion for a Stay of Execution Pending Certiorari was served electronically upon Respondent’s counsel as follows:

Beth Burton
Deputy Assistant Attorney General
Office of Attorney General
132 State Judicial Building
40 Capitol Square, S.W.
Atlanta, Georgia 30334
bburton@law.ga.gov

Dated: This, the 20th day of March 2024.

/s/ Gretchen M. Stork
Gretchen M. Stork

COUNSEL FOR WILLIE PYE