No. 23A878
CAPITAL CASE

In the

SUPREME COURT OF THE UNITED STATES

MICHAEL DEWAYNE SMITH, *Applicant*,

-vs-

STATE OF OKLAHOMA, *Respondent.*

To the Honorable Neil Gorsuch,
Associate Justice of the Supreme Court of the United States
and Circuit Justice for the United States Court of Appeals for the Tenth Circuit

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RESPONSE IN OPPOSITION TO EMERGENCY APPLICATION FOR STAY OF EXECUTION PENDING FILING AND DISPOSITION OF PETITION FOR WRIT OF CERTIORARI

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Execution Scheduled for April 4th, 2024, at 10:00 a.m. CT

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INTRODUCTION

On February 22, 2002, Applicant Michael DeWayne Smith ("Petitioner") murdered both Janet Moore and Sarath Pulluru. *Smith v. State*, 157 P.3d 1155 (Okla. Crim. App. 2007). A jury convicted Petitioner of two counts of first degree murder and sentenced him to death in 2003. *Id*. After exhausting all state and federal appeals, Petitioner is now scheduled for execution on April 4, 2024, more than two decades after murdering Ms. Moore and Mr. Pulluru.

However, at the very last minute, Petitioner seeks a stay of his execution pending the filing and disposition in this Court of a petition for certiorari review of the Oklahoma Court of Criminal Appeals' ("OCCA") (as of yet not issued) decision on his claim of witness recantation. On April 2, 2024, less than 48 hours before his scheduled execution, Petitioner filed a sixth post-conviction application in which he re-presented claims, that have previously been denied, on the basis of a witness's alleged "recantation" that has been available since at least 2009. Petitioner's application for a stay should be denied.

STATEMENT OF THE FACTS

The OCCA found the following facts on direct appeal:

> ¶ 3 The Appellant, Michael DeWayne Smith, was a member of the Oak Grove Posse, a subset of the Crips gang in Oklahoma City. On November 8, 2000, three members of the Oak Grove Posse attempted to rob Tran's Food Mart in south Oklahoma City. The three robbers were Teron "T–Nok" Armstrong, Kenneth "Peanut" Kinchion, and Dewayne "Pudgy–O" Shirley. During the course of the robbery attempt, the owner of the store shot and killed Armstrong. Kinchion and Shirley were eventually arrested. Smith was not involved in the attempted robbery

but had close personal ties to Armstrong.

¶ 4 On Friday, February 22, 2002, two days before the trial of Kinchion and Shirley was scheduled to start, Smith left his apartment in the Del Mar Apartments in Oklahoma City early in the morning. His roommate, Marcus Berry (also known as Marcus Compton), saw Smith take a .357 caliber revolver with him. Smith went first to Janet Moore's apartment looking for her son Phillip Zachary who he believed was a police informant. Smith had earlier told Berry that "snitches need to be dead."

¶ 5 The evidence supports the conclusion that Smith arrived at Moore's apartment sometime before 6:30 a.m. Shoe prints indicated that Smith kicked in her front door and then her bedroom door. Moore began screaming, and, at approximately 6:30 a.m., a downstairs neighbor heard arguing between a man and a woman and then a single "pop" followed by footsteps.

¶ 6 Later that morning around 7:30 a.m. Smith arrived at A–Z Mart, a convenience store approximately fifteen miles from the Del Mar Apartments. A–Z Mart was immediately next door to Tran's Food Mart, the site of the earlier robbery attempt where Armstrong had been killed. The clerk on duty that morning at A–Z Mart was Sarath "Babu" Pulluru. Pulluru was filling in for the store owner who was taking the day off. Smith told detectives that he emptied two pistols into Pulluru, took some money, and used bottles of Ronsonol lighter fluid to start fires in the store. Smith said he set fire to the cash register, Pulluru's body, and a back room in order to destroy evidence. Shoeprints at the scene tracked Pulluru's blood from the cash register area, where his body was found, down the aisle to where the Ronsonol lighter fluid was displayed for sale. The bloody shoe prints at the A–Z Mart were similar to the shoe prints found at Moore's apartment.

¶ 7 At 1:00 or 2:00 a.m. the next morning, Smith returned to his apartment and told Berry that he had killed Janet Moore. He also told Berry that he had done something else to "take care of business," that he had avenged his family.

¶ 8 At 3:00 or 4:00 a.m., Smith went to Sheena Johnson's

> apartment and told her that he had killed two people that day. During that conversation, Smith told her that he had killed Phillip Zachary's aunt because Zachary had been "snitching." Johnson had already learned of Moore's murder and told Smith that the victim was Zachary's mother, not his aunt. In response, Smith shrugged his shoulders, and said "oh well." Smith showed Johnson how he held his gun when he shot Moore and went on to say that he had also killed a person at a "chink" store. During his description of the second homicide, Smith mentioned something about one of his fellow gang members having his head blown off during a robbery. He said he would kill anyone who crossed his family. Smith also mentioned that someone had been on television "dissing" his set in regard to that robbery. Subsequently, Johnson contacted CrimeStoppers and reported the conversation. When she made that report, Smith was already in police custody on a different matter.
>
> ¶ 9 Three days after Smith was detained, detectives interviewed him. Smith was given *Miranda* warnings, waived them, and agreed to talk. During the interview, Smith first denied committing the murders, then admitted only to being present, and finally admitted committing both murders. He explained he killed both victims in retaliation for wrongs done him or his family. He told detectives he went to Moore's apartment looking for her son, that Moore panicked and started screaming, so he had to kill her. He said he killed Pulluru in retaliation against the store owner who shot Armstrong and in retaliation for disrespectful comments about Armstrong in the press attributed to someone from the A–Z Mart Mart. According to Smith, as he fired off the initial barrage of bullets, Pulluru asked "what did I do?" Smith told him: "[M]y mother-f* * * * * * little homey, my people on the set, like, bam, bam, before he died I let him know, like this is for my little homey that's dead. Bam, bam, bam." Smith also told detectives that he had disposed of the clothes he had worn during the murders, that he had wiped down Moore's apartment to eliminate fingerprints, and that he set fire to whatever he had touched in the A–Z Mart to destroy evidence.

Smith, 157 P.3d at 1160-62.

STATEMENT OF THE CASE

In 2017, Petitioner exhausted all challenges to his convictions and death sentences. However, due to pending litigation in federal court regarding Oklahoma's execution protocol, and the fact that a number of other inmates exhausted their appeals before Petitioner, his execution date was delayed until April 4, 2024.

On direct appeal, Petitioner argued the evidence was insufficient to support his convictions because his confession to police was not corroborated. *Smith*, 157 P.3d at 1175. The OCCA found the confession corroborated by: (1) Petitioner's confessions to Sheena Johnson and Marcus Berry; (2) Petitioner's accurate account of the murders; and (3) ballistics which confirmed details of Petitioner's confession and linked the two murders. *Id*. at 1175-76.

In his second post-conviction application, Petitioner claimed that Ms. Johnson gave false testimony at trial, that the State failed to disclose and/or correct the false portions of her testimony, and that her allegedly perjured testimony rendered his convictions and sentences unreliable. *See Smith v. State*, 245 P.3d 1233, 1238 (Okla. Crim. App. 2010). Specifically,

> Sheena Johnson's affidavit is dated December 9, 2009. In the affidavit, Johnson alleges that: (1) her children were taken away from her by the trial judge to force her to testify against Smith; and (2) she testified falsely about certain statements Smith made to her about the Pulluru murder and that she did so using information police told her to include in her testimony. Johnson's allegation about her children being taken from her as coercion was known at the time of Smith's 2003 trial. It was discussed between Smith's trial attorney, the judge, and the prosecutor, in response to the prosecutor's objection to Smith's cross-examination of Johnson, in which defense counsel inquired into Johnson's reasons for testifying.[7] Johnson's fear about losing her children was also known at

> the time of Smith's preliminary hearing in 2002, when she stated her belief that if she did not testify "I would have got arrested and my—I have a three-month-old baby and he would have—child welfare would have got him" (P.H. 54). Obviously, Johnson's fear of having her children taken away from her as retribution for not testifying was information that was known at the time of Smith's trial and could have been used to raise this issue on direct appeal or in Smith's first application for post-conviction relief. This information cannot serve as the factual basis for a second application for post-conviction relief. 22 O.S. Supp.2006, § 1089(D)(8).
>
> [7] *See* Tr. Vol. 8 at 84–86.
>
> Additionally, the single piece of new information contained in Johnson's affidavit (i.e., that she lied about Smith's statements concerning the Pulluru murder under police direction) was certainly available at the time the affidavit was executed on December 9, 2009, if not earlier.

Smith, 245 P.3d at 1238. The OCCA found the claim procedurally barred. *Id*. The United States District Court for the Western District of Oklahoma similarly rejected the claim, enforcing the procedural bar for the portion of Ms. Johnson's "recantation" relating to her children and denying relief on the merits (de novo) with respect to the allegation that police fed her information. *Smith v. Trammell*, No. CIV-09-293-D, 2014 WL 4627225, at *4-12 (W.D. Okla. Sept. 16, 2014), *aff'd sub nom. Smith v. Duckworth*, 824 F.3d 1233 (10th Cir. 2016).[1]

On April 2, 2024, Petitioner filed his sixth post-conviction application in the OCCA. This application, which is the subject of Petitioner's request for a stay of execution, relies upon a new affidavit from Ms. Johnson. The new affidavit repeats the allegations that were adjudicated in 2010 and adds two new "facts": (1) that the

[1] The court expressed "grave doubt about the averments made by Ms. Johnson . . . especially under the facts and circumstances of this case." *Smith*, 2014 WL 4627225, at *10.

trial judge and prosecutor knew Ms. Johnson did not place her hand on the Bible when sworn to testify because her testimony "was not the full truth" and (2) that she did not call Crime Stoppers, a member of her family did. Pet. App. at unnum. 5. Based on these two new allegations, Petitioner presents three legal claims: (1) that his confession to police was not adequately corroborated; (2) that the State withheld evidence in violation of *Strickler v. Greene*, 527 U.S. 263, 280 (1999); and (3) that the State knowingly presented false testimony in violation of *Napue v. Illinois*, 360 U.S. 264 (1959). Petitioner also filed in the OCCA motions for a stay of execution, discovery, and an evidentiary hearing.

The State has prepared responses to each of Petitioner's filings in the OCCA. They will be filed on the morning of April 3, 2024. As of this writing, the OCCA has not yet ruled on Petitioner's application.[2]

ARGUMENT

This Court will not grant a stay pending the filing and disposition of a certiorari petition unless the applicant establishes:

> (1) a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari; (2) a fair prospect that a majority of the Court will vote to reverse the judgment below; and (3) a likelihood that irreparable harm will result from the denial of a stay. In

[2] Notably, seemingly inconsistent with federal statute and this Court's Rules, Petitioner has sought a stay of execution from this Court before giving the OCCA a reasonable opportunity to rule on his requests for mandamus relief and a stay of execution. *See* 28 U.S.C. § 2101(f) (stay of a final judgment in order to enable a petition for writ of certiorari); *see also* Sup. Ct. R. 23.2 (stay of enforcement of a final judgment), 23.3 ("Except in the most extraordinary circumstances, an application for a stay will not be entertained unless the relief requested was first sought in the appropriate court or courts below or from a judge or judges thereof.").

> close cases the Circuit Justice or the Court will balance the equities and weigh the relative harms to the applicant and to the respondent.

Hollingsworth v. Perry, 558 U.S. 183, 190 (2010) (*per curiam*); *see also Lucas v. Townsend*, 486 U.S. 1301, 1304 (1988) (Kennedy, J., in chambers); *Evans v. Alabama*, 461 U.S. 1301, 1302 (1983) (Powell, J., in chambers); *Rostker v. Goldberg*, 448 U.S. 1306, 1308 (1980) (Brennan, J., in chambers).

"A stay is not a matter of right, even if irreparable injury might otherwise result," and is "instead an exercise of judicial discretion," "dependent upon the circumstances of the particular case." *Nken v. Holder*, 556 U.S. 418, 433 (2009) (quotation marks omitted). "The party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion." *Id.* at 433-34. Moreover, in the execution context, the decision whether to grant a stay "must be sensitive to the State's strong interest in enforcing its criminal judgments." *Hill v. McDonough*, 547 U.S. 573, 584 (2006); *see also Murphy v. Collier*, 139 S. Ct. 1475, 1480 (2019) (Alito, J., dissenting); *Gomez v. U.S. Dist. Ct. for N. Dist. of California*, 503 U.S. 653, 654 (1992) (*per curiam*) (each state has a "strong interest in proceeding with its judgment"). "Both the State and the victims of crime have an important interest in the timely enforcement of a sentence." *Hill*, 547 U.S. at 584. Last-minute execution stays are especially disfavored. *See Dunn v. Price*, 139 S. Ct. 1312, 1312 (2019); *Bucklew v. Precythe*, 139 S. Ct. 1112, 1133-34 (2019); *Hill*, 547 U.S. at 584.

Here, Petitioner cannot show a reasonable probability that certiorari review will be granted, let alone a significant possibility of reversal. Moreover, Petitioner cannot demonstrate a likelihood of irreparable harm or that the balance of equities

weighs in his favor. Finally, Petitioner's argument based on the All Writs Act, 28 U.S.C. § 1651, is without merit, as the All Writs Act does not excuse Petitioner's burden to demonstrate he is entitled to a stay. Petitioner's requested stay must be therefore denied.

I. Petitioner cannot meet his burden to demonstrate that he is entitled to a stay of execution.

A. Petitioner is unlikely to receive certiorari review, let alone a reversal of the OCCA's decision.

Petitioner has not shown a reasonable probability that four members of this Court will be of the opinion that the issues are sufficiently meritorious to warrant a grant of certiorari, let alone a significant possibility of reversal of the OCCA's decision. *Hollingsworth*, 558 U.S. at 190.

"A petition for a writ of certiorari will be granted only for compelling reasons," such as to resolve conflicts in the law among federal circuit courts and/or the highest state courts or between this Court and lower courts. Sup. Ct. R. 10(a)-(c). "A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." Sup. Ct. R. 10. As will be shown, Petitioner seeks mere error-correction review.

Petitioner seeks a stay of execution so that he might later ask this Court to grant certiorari to consider his very late claims of error based on facts that have been available to him since 2009, if not since the time of trial.[3] It is very likely that the

[3] Petitioner points out that Ms. Johnson was reluctant to testify at trial out of fear. But that is no explanation for her failure to provide all details to counsel in 2009. If anything, one would think that recanting her testimony would please Petitioner and

OCCA will deny these claims on procedural grounds, thereby depriving this Court of jurisdiction over any petition for writ of certiorari. *See Coleman v. Thompson*, 501 U.S. 722, 729 (1991); Okla. Stat. Tit. 22, § 1089(D)(8) (claims raised in successive post-conviction applications may not be considered absent certain limited circumstances such as new facts that could not have been ascertained previously through the exercise of reasonable diligence *and* which would show by clear and convincing evidence that no reasonable fact-finder would have found the petitioner guilty).

In any event, Petitioner's claims are entirely without merit in light of the overwhelming evidence of his guilt. The chain of events leading to the murders in this case was the death of Petitioner's friend (and fellow Crip gang member) who was shot by a convenience store owner during an attempted robbery. *Smith*, 157 P.3d at 1160-61. Two days after the robbery attempt, the Oklahoman (a local newspaper) published a story covering the robbery. As part of the article, reporters interviewed a clerk from the A&Z Food Mart, the store next door to Trans Food Mart:

> [M.J.], who works next door at the A&Z Food Mart, said he is proud of his neighbor.
>
> 'It makes me nervous, yeah,' he said. 'But it makes me proud more than nervous because a clerk did it. The rest of the kids will learn a lesson by him being dead and stop doing these things.'

(OCCA No. PC-2024-216 O.R. 123-24).

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reduce Ms. Johnson's fears. There is simply no explanation for the omission of the "new" details from Ms. Johnson's original affidavit.

Two other individuals involved in the attempted robbery were scheduled to go to trial in Oklahoma County on February 25, 2002, approximately one year and three months following the offense (Trial Tr. IX 179). On February 22, 2002, Petitioner decided to get revenge.

Petitioner was sharing an apartment with Marcus Berry (Trial Tr. V 80). On the morning of February 22, 2002, Petitioner left the apartment at 5:00 or 6:00 a.m., carrying a .357 revolver, and wearing all black clothing (Trial Tr. V 94-102). Petitioner used a .357 caliber gun to kill Janet Moore as described in the Statement of the Facts (Trial Vol. VI 37, 79). *Smith*, 157 P.3d at 1161.

Next, instead of targeting the Trans Food Mart, Petitioner decided to go after the clerk at the A&Z Food Mart who had "dissed his set" (Trial Tr. VIII 36-37). Around 7:50 a.m., Kimberly Solis, a regular of the A&Z Food Mart, stopped by the store on her way to work (Trial Tr. VI 112-13, 119). Mrs. Solis tried to open the door at the entrance to the store, but it was locked, which was unusual; Mr. Pulluru pushed the button at the counter to let Mrs. Solis inside when he saw her (Trial Tr. VI 125-26). When Mrs. Solis entered the store, Petitioner (whom she identified with 90% certainty) was standing at the check-out counter wearing dark clothing, a dark, brimless cap, and tennis shoes (Trial Tr. VI 114, 121-23). Petitioner was arguing with Mr. Pulluru, who was working the counter, because Petitioner did not have enough money to pay for the items he had selected (Trial Tr. VI 115). During the interaction, Petitioner was agitated, but also laughing inexplicably, "[g]iggling to himself under his breath like the situation was funny and it didn't appear to be funny" (Trial Tr. VI

115). Petitioner also kept one hand in his pocket throughout the interaction (Trial Tr. VI 137).

After Mrs. Solis left, Petitioner shot and killed store clerk Sarath Pulluru "and used bottles of Ronsonol lighter fluid to start fires in the store. . . . in order to destroy evidence." 157 P.3d at 1161. The fire damage to the store, however, was minimal because of the properties of lighter fluid as an accelerant (Trial Tr. VI 197, 200, 203-05). One of the guns used to kill Mr. Pulluru (he was shot with two different guns) was used to kill Ms. Moore (Trial Tr. IX 43, 74). *Smith*, 157 P.3d at 1167.

After murdering both Ms. Moore and Mr. Pulluru by 8:30 a.m. on February 22, 2002, Smith returned home still wearing the same clothes and acting "crazy" (Trial Tr. V 108). There, Petitioner told Mr. Berry that "[h]e did something he had to do," and had "handled his business" (Trial Tr. V 80, 110). Petitioner elaborated that he had killed Ms. Moore and had gotten revenge on the people who "crossed his family" (Trial Tr. V 13, 115). Mr. Berry left and went to a girl's house to get some sleep (Trial Tr. V 115). When Mr. Berry eventually returned, Petitioner had cut off all of his hair and shaved his face and eyebrows (Trial Tr. V 116).

When police discovered the similarities between the shoeprints (discussed in the Statement of the Facts), "the only person who knew that these crimes were related were the suspect, the homicide division, and the ballistics guy. Nobody else." (Tr. IX 190). Yet, when Ms. Johnson called Crimestoppers, she reported that H.K. (aka Hoover Killer, aka Michael DeWayne Smith) had committed both murders (Tr. IX 190; Tr. X 23).

With this amount of corroborative evidence, Ms. Johnson's testimony could be excluded in its entirety with no effect of the jury's verdict. *See Smith*, 2014 WL 4627225, at *10-11 (holding Ms. Johnson's testimony was not necessary to corroborate Petitioner's confession as it was otherwise corroborated by "the crime scene evidence, including expert testimony that the same gun was used in both murders, and medical testimony regarding the manner in which both victims were killed").

Yet, Ms. Johnson does not actually recant her testimony; only portions of it. She does not deny that Petitioner confessed the murders to her or that this confession is what led to the Crime Stoppers tip. Whether Ms. Johnson made the call, or she relayed information to a member of her family who placed the call, the fact remains that Petitioner confessed to Ms. Johnson before the public knew the two seemingly unrelated murders were committed by the same person.

Petitioner cannot establish that his confession lacked adequate corroboration, that the State withheld material evidence (evidence that would have created a reasonable probability of a different outcome), or that the State knowingly presented materially false testimony. *See Strickler*, 527 U.S. 263, 280; *Napue*, 360 U.S. 264; *Smith*, 2014 WL 4627225, at *10-11 (holding "there [was] no reasonable probability or likelihood that the jury's verdicts would have been affected" by Ms. Johnson's 2009 affidavit, and that "Ms. Johnson's post-trial averments that a portion of her testimony was made at the urging of the police [was] *without consequence*" (emphasis added)). Petitioner has failed to show a reasonable probability that certiorari review will be

granted, let alone a significant possibility of reversal. Sup. Ct. R. 10; *see Halbert v. Michigan*, 545 U.S. 605, 605 (2005) (explaining that, on "certiorari review in this Court," "error correction is not" this Court's "prime function").

B. Petitioner cannot demonstrate the likelihood of irreparable harm or that the balance of equities weighs in his favor.

Further, Petitioner has not shown the likelihood of irreparable harm if he is not granted a stay, nor has he shown that the balance of equities and harms weighs in his favor. *Hollingsworth*, 558 U.S. at 190. With respect to the likelihood of irreparable harm, Petitioner's claims are without merit, as shown above.

Moreover, Petitioner fails to show that a balancing of the equities and harms weighs in his favor. This Court "must be sensitive to the State's strong interest in enforcing its criminal judgments without undue interference from the federal courts." *Hill*, 547 U.S. at 584. As previously noted, the loved ones of Janet Moore and Sarath Pulluru have been waiting more than two decades for justice. Thus, "[t]he people of [Oklahoma], the surviving victims of Mr. [Smith]'s crimes, and others like them deserve better," especially when Petitioner's justifications for a stay are entirely without merit. *Bucklew*, 139 S. Ct. at 1134. *See also Ramirez v. Collier*, 142 S. Ct. 1264, 1282 (2022) (the "balance of equities and public interest" weighed in the inmate's favor, especially when he made a "tailored" request and did "not seek an open-ended stay of execution" (quotation marks omitted)).

The equities also strongly weigh against a stay in light of Petitioner's lack of diligence. "A stay of execution is an equitable remedy, and '[e]quity must take into consideration the State's strong interest in proceeding with its judgment and . . .

attempt[s] at manipulation.'" *Nelson v. Campbell*, 541 U.S. 637, 649 (2004) (citation omitted). Petitioner's attempt to re-purpose a 13 year old affidavit is a delay tactic.

> Courts should police carefully against attempts to use such challenges [in that case it was to the method of execution] as tools to interpose unjustified delay. Last-minutes stays should be the extreme exception, not the norm, and the last-minute nature of an application that could have been brought earlier, or an applicant's attempt at manipulation, may be grounds for denial of a stay.

Bucklew v. Precythe, 139 S. Ct. 1112, 1134 (2019); *see also Gomez v. U.S. Dist. Ct. for N. Dist. of California*, 502 U.S. 653, 654 (1992) (*per curiam*) ("There is no good reason for this abusive delay, which has been compounded by last-minute attempts to manipulate the judicial process. A court may consider the last-minute nature of an application to stay execution in deciding whether to grant equitable relief.").

C. Conclusion.

Ultimately, in light of the foregoing, Petitioner has not met his burden to show that he is entitled to a stay of execution pending the filing and disposition of a petition for certiorari. *Hollingsworth*, 558 U.S. at 190.

II. The All Writs Act does not relieve Petitioner of his burden to show he is entitled to a stay.

As a final matter, Petitioner asks this Court to stay his execution under the All Writs Act. To be sure,

> [a]n appellate court's power to hold an order in abeyance while it assesses the legality of the order has been described as "inherent," preserved in the grant of authority to federal courts to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law," All Writs Act, 28 U.S.C. § 1651(a).

Nken, 556 U.S. at 426.[4] However, the All Writs Act does not simply allow federal courts to dispense with the normal stay or injunction requirements. *See Dunn v. McNabb*, 138 S. Ct. 369 (2017) (injunction was improperly granted by federal district court because "[i]nmates seeking time to challenge the manner in which the State plans to execute them must satisfy all of the requirements for a stay, including a showing of a significant possibility of success on the merits," and the "All Writs Act does not excuse a court from making these findings" (citation omitted)).

The All Writs Act cannot be used to circumvent this Court's existing requirements and procedures concerning stays of execution. *See Cooey v. Strickland*, 589 F.3d 210, 234 (6th Cir. 2009) (rejecting inmate's argument that circuit court could issue stay of execution to prevent case from becoming moot despite inmate's failure to meet his burden, as the All Writs Act was meant as a "residual source of authority," not a way to circumvent existing procedures); *Lambert v. Buss*, 498 F.3d 446, 454 (7th Cir. 2007) ("There is no reason why the All Writs Act can or should be used to thwart the proper application of the factors associated with the issuance or denial of a preliminary injunction."); *Green v. Warden, U.S. Penitentiary*, 699 F.2d 364, 367 (7th Cir. 1983) ("The intent of the Act is to effectuate established jurisdiction, not to enlarge it."). Because Petitioner cannot meet his burden of demonstrating his entitlement to a stay of execution pending the filing and disposition of a petition for certiorari, Petitioner's request for a stay of execution should be denied.

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[4] *See* Sup. Ct. R. 20.1 ("Issuance by the Court of an extraordinary writ authorized by 28 U.S.C. § 1651(a) is not a matter of right, but of discretion sparingly exercised.").

CONCLUSION

This Court should deny Petitioner's stay application.

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