No. 25A104

IN THE
SUPREME COURT OF THE UNITED STATES

EDWARD J. ZAKRZEWSKI, *Petitioner*,

v.

STATE OF FLORIDA, *Respondent*.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF FLORIDA

RESPONSE TO APPLICATION FOR A STAY OF THE EXECUTION

EXECUTION SCHEDULED FOR JULY 321, 2025, AT 6:00 P.M.

On July 24, 2025, represented by state postconviction counsel, Edward J. Zakrzewski filed a Petition for a Writ of Certiorari in this Court, seeking review of the Florida Supreme Court's July 22, 2025 decision in this active death warrant case. The Petition raised one main issue: Whether his three 1996 death sentences were unconstitutional under the Eighth Amendment because two of the death sentences were based on simple majority jury recommendations and the trial court's override of a life sentence recommendation for the third murder, rendering him ineligible to be sentenced to death. Zakrzewski contemporaneously filed an application for stay of execution for this Court to decide the pending petition. This Court should deny both, the petition and application for stay.

Stays of Execution

Stays of executions are not granted as "a matter of course." *Hill v. McDonough*, 54 7 U.S. 573, 583-84 (2006). Rather, a stay is "an equitable remedy" and "equity must be sensitive to the State's strong interest in enforcing its criminal judgments without undue interference from the federal courts." *Id.* at 584. There is 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." *Nelson v. Campbell*, 541 U.S. 637, 650 (2004). Equity must also consider "an inmate's attempt at manipulation." *Gomez v. U.S. Dist. Ct. for N. Dist. of Cal.*, 503 U.S. 653,654 (1992). "Both the State and the victims of crime have an important interest in the timely enforcement of a sentence." *Calderon v. Thompson*, 523 U.S. 538, 556 (1998).

This Court has highlighted the State's and the victims' interests in the timely enforcement of the death sentence. *Bucklew v. Precythe*, 587 U.S. 119, 149-51 (2019). The people of Florida, as well as surviving victims and their families, "deserve better" than the "excessive" delays that now typically occur in capital cases. *Id.* at 149. The Court has stated that courts should "police carefully" against last minute claims being used "as tools to interpose unjustified delay" in executions. *Id.* at 150. This Court has also repeatedly stated that last minute stays of execution should be the "extreme exception, not the norm." *Barr v. Lee*, 591 U.S. 979,981 (2020) (vacating a lower court's grant of a stay of a federal execution quoting *Bucklew*, 587 U.S. at 151).

To be granted a stay of execution in this Court, the petitioner must establish

three factors: (1) a reasonable probability that the Court would vote to grant certiorari; (2) a significant possibility of reversal if review was granted; and (3) a likelihood of irreparable injury to the applicant in the absence of a stay. *Barefoot v. Estelle*, 463 U.S. 880, 895 (1983). Zakrzewski has established none.

Probability this Court will Grant Certiorari Review

There is little chance that this Court would entertain review of Zakrzewski's pending Petition. This Court's Rule 10 provides that certiorari will be granted "only for compelling reasons," which include the existence of conflicting decisions on issues of law among federal courts of appeal, state courts of last resort, or between federal courts of appeal and state courts of last resort. No compelling reasons exist here.

In state court, Zakrzewski claimed that his death sentences were illegal and unconstitutional under the Eighth Amendment because: (1) the jury's simple majority (7-5) death recommendations for his wife and 7-year-old son's murders and the judicial override of the jury's life sentence recommendation for his 5-year-old daughter's murder would not stand, if he was sentenced today; and (2) *Hurst v. Florida*, 577 U.S. 92 (2016) should be applied to him retroactively, even though the death sentences became final in 1999, prior to *Ring v. Arizona*, 536 U.S. 584 (2002). *Zakrzewski v. State*, No. SC2025-1009, 2025 WL 2047404, *3-*4 (Fla. July 22, 2025).

As a threshold matter, the Florida Supreme Court rejected this claim because it was untimely under a Florida rule of court and procedurally barred, as provided by state law cases, where the claim had been previously raised on appeal and rejected.[1]

[1] The Florida Supreme Court also rejected Zakrzewski's claim, finding it was meritless. *Zakrzewski*, 2025 WL 2047404 at *3–*4.

Zakrzewski, 2025 WL 2047404 at *3. Zakrzewski's claim was untimely based on the rule of court which prohibits a successive postconviction claim raised more than one year after his judgments and sentences became final, unless it falls within one of three stated exceptions. Fla. R. Crim P. 3.851(d). *Zakrzewski*, 2025 WL 2047404 at *3. Zakrzewski's judgment and sentences became final in 1999 when this Court denied certiorari review of the Florida Supreme Court's decision affirming his sentences. *Id.* However, he provided no basis to overcome the untimely claim. *Id.*

The Florida Supreme Court also found the judicial override and *Hurst v. Florida* aspects of the claim procedurally barred. *Zakrzewski*, 2025 WL 2047404 at *4. The judicial override issue was raised and rejected in his direct appeal. *Id.* (citing *Zakrzewski v. State*, 717 So. 2d 488, 494 (Fla. 1998)). His claim that *Hurst v. Florida* should apply to him retroactively was raised and rejected by the Florida Supreme Court two times. *Id.* (citing *Zakrzewski v. State*, 221 So. 3d 1159 (Fla. 2017); *Zakrzewski v. State*, 254 So. 3d 324 (Fla. 2018)).

Both grounds for rejecting the claim are independent and adequate state law grounds and this Court lacks jurisdiction to review state law issues. *Michigan v. Long*, 463 U.S. 1032 (1983); *Foster v. Chatman*, 578 U.S. 488, 497 (2016). Moreover, Zakrzewski does not cite a conflict or unsettled question of law for this Court's review. Indeed, he has not presented a colorable constitutional question for review. Instead, he improperly framed his claim as an Eighth Amendment violation and in the process, ignored this Court's most relevant and controlling precedent on a capital jury's sentencing role in *McKinney v. Arizona*, 589 U.S. 139 (2020). The Petition failed

to address or even mention *McKinney* and failed to explain the rationale behind raising the claim under the Eighth Amendment and evolving standards of decency standard, as opposed to the Sixth Amendment's right to trial by jury which applies. Presumably he does so, because the federal jurisprudence on the jury's role in capital sentencing as it exists today would not provide the relief he seeks.

Review of Zakrzewski's Petition would be unworthy under normal circumstances, much less on the eve of an execution. Further, he has been given decades more process than he has been due, given the death sentences he earned for brutally murdering his wife and the unthinkable, murdering of his two young children with a machete. A stay of his execution is not merited.

Significant Possibility of Reversal

There is no significant possibility that this Court would reverse the Florida Supreme Court's denial of Zakrzewski's Eighth Amendment and evolving standards of decency argument regarding the 7-5 sentencing recommendation, judicial override, or *Hurst v. Florida* retroactivity. Again, this Court lacks jurisdiction to grant the Petition, as the Florida Supreme Court's decision was based on independent and adequate state law that the claim was untimely and procedurally barred. Zakrzewski failed to identify any error of law by the Florida Supreme Court and did not identify any conflict of decisions or an important or unsettled federal question that would require this Court's intervention. Even so, Zakrzewski would not prevail on the merits.

The Petition offers little more than a lengthy discussion of how the Eighth

Amendment and evolving standards of decency do not support capital punishment. Petition at 11. Zakrzewski's faulty argument that current capital jurisprudence should be applied to his constitutional 1996 sentencing recommendations in order to convert his three death sentences to life sentences is based in part on Florida state law and not constitutional constructs.

Zakrzewski's guilty pleas to three counts of first-murder rendered him eligible for a death sentence the minute his penalty phase began. The guilty pleas also passed Sixth Amendment muster as they are convictions which supported the contemporaneous capital or felony aggravator. This fact was acknowledged by the Florida Supreme Court when it affirmed denial of Zakrzewski's 2000 initial postconviction motion and a claim that Florida's death penalty statute was unconstitutional under *Apprendi v. New Jersey*, 530 U.S. 466 (2000) and *Ring v. Arizona*, 536 U.S. 584 (2002). The Florida Supreme Court specifically found that Zakrzewski's guilty pleas were equivalent to convictions and the "prior violent felony or capital felony conviction aggravator exempts this case from the requirement of jury findings on any fact necessary to render a defendant eligible for the death penalty." *Zakrzewski v. State*, 866 So. 3d 688, 696-97 (Fla. 2003) (citing *Boykin v. Alabama,* 395 U.S. 238, 242 (1969) ("A plea of guilty is more than a confession which admits that the accused did various acts; it is itself a conviction; nothing remains but to give judgment and determine punishment.")). Zakrzewski did not seek this Court's certiorari review of this decision by the Florida Supreme Court or ever claim it to be wrong.

Zakrzewski seeks to once again turn back the clock to undo his three death sentences, as he has unsuccessfully attempted to do over the past three decades. But, he offers no authority to upend well-settled precedent on *Hurst v. Florida* retroactivity or this Court's decision in *McKinney* which conclusively clarified the Sixth Amendment's constitutional requirements regarding a jury's capital sentencing role. His Petition does not address *McKinney*'s constitutional paradigm that under the Sixth Amendment, a penalty phase jury need only find one aggravating factor to render a capital defendant death penalty eligible or that states that "leave the ultimate life-or-death decision to the judge may continue to do so." *See McKinney*, 589 U.S. at 145.

There is no "significant" possibility that Zakrzewski will prevail in this Court on the merits and this case remains unworthy of review or granting a stay of his execution.

Irreparable Harm

Finally, Zakrzewski claims a stay is warranted to "ensure meaningful review" to make certain he is not denied due process. Application at 4. He alleges that "substantial legal issues remain outstanding." *Id.* But, these statements are conclusory and unsupported. There is no irreparable harm to Zakrzewski, other than the execution itself, which is inherent in the death sentences he received as the consequences of murdering his family with a machete.

The factors for granting a stay are taken from those applied to normal civil litigation, which is not a natural fit in capital cases. *Barefoot*, 463 U.S. at 895-96

(citing *Times-Picayune Pub. Corp. v. Schulingkamp*, 419 U.S. 1301, 1305 (1974) (Powell, J., in chambers)). This Court has stated that, in the capital context, "the *relative* harms to the parties" must still be considered, including "the State's significant interest in enforcing its criminal judgments." *Nelson*, 541 U.S. at 649-50 (emphasis added). Without finality, "the criminal law is deprived of much of its deterrent effect." *Calderon*, 523 U.S. at 555-56.

Finality in a capital case is the execution, so some additional showing should be required in a capital case to satisfy this factor. Zakrzewski has not identified any irreparable harm that is not a direct consequence of the valid, constitutional, and long-final death sentences that were imposed in 1996 for the murders of his wife and young children. Again, finality in a capital case is the execution and the execution, in and of itself, cannot be the irreparable harm.

Accordingly, this Court should deny the pending petition for a writ of certiorari and the application for stay of execution.

Respectfully submitted,

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