

to take any action on the State's motion for the following reasons:

First, Mr. Madison's case is currently in a procedural posture that does not lend itself to the expedited process the State now seeks. The case is still pending before the United States Supreme Court where undersigned counsel intends to seek rehearing in the next seven days because the Supreme Court did not address a critical question relating to the parameters of habeas corpus. See Sup. Ct. R. 44(1) ("petition for the rehearing of any ... decision of the Court on the merits shall be filed within 25 days after entry of the judgment or decision...."). It would be inappropriate for this Court to schedule an execution in this case until litigation is complete in the United States Supreme Court. See Sup. Ct. R. 45 ("filing of a petition for rehearing stays the mandate until disposition of the petition").

On March 4, 2016, this Court scheduled Vernon Madison's execution for May 12, 2016. On the scheduled execution date, the Eleventh Circuit Court of Appeals stayed the execution, *but more importantly*, granted a certificate of appealability as to the question of whether the trial court erred in determining that Mr. Madison was competent to be executed, a

claim that was being raised for the first time and had not been reviewed by any state appellate or federal court. Madison v. Comm'r, Ala. Dep't. of Corr., No. 16-12279, Order dated May 12, 2016.

Subsequently, after full merits briefing and oral argument, the Eleventh Circuit Court granted habeas corpus relief, finding that by virtue of his vascular dementia and related medical impediments, Mr. Madison was not competent to be executed. Madison v. Comm'r, Ala. Dep't. of Corr., 851 F.3d 1173, 1194 (11th Cir. 2017). The State's petition for rehearing was denied, and the Eleventh Circuit issued the mandate on May 12, 2017.

Just two days ago, on November 6, 2017, the United States Supreme Court issued a per curiam opinion, without briefing or argument, and reversed the Eleventh Circuit's grant of habeas corpus relief. Dunn v. Madison, No. 17-193, 2017 WL 5076050 (Nov. 6, 2017). Notably, the Court's opinion was limited to the determination that under the deferential standard of the AEDPA, "Madison's claim to federal habeas relief must fail," id. at *3.

Undersigned counsel believes that the Supreme Court opinion overlooked substantial and critical facts relating to

the parameters of habeas corpus, and as such, intends to file a petition for rehearing at that Court in the next week. See Sup. Ct. R. 44(1). The case has not been finalized by issuance of a mandate from the Supreme Court, see Sup. Ct. R. 45, and as such, this Court should refrain from setting an execution date at this time.

Second, the merits of the question of whether the Eighth Amendment prohibits Mr. Madison's execution because he is not competent were not resolved by the Supreme Court's decision.

Dunn, 2017 WL 5076050 at *3 ("We express no views on the merits of the underlying question outside of the AEDPA context."). The Supreme Court's opinion did not address Mr. Madison's DSM-V diagnosis of vascular dementia or his significant medical impairments and declining medical condition, which led all three judges of the Eleventh Circuit panel to specifically find that, as a matter of fact, Vernon Madison is incompetent to be executed.²

Moreover, since Mr. Madison's scheduled execution was stayed, there have been new factual developments related to

²See Madison, 851 F.3d at 1190 ("We therefore conclude that Mr. Madison is incompetent to be executed."); id. (Jordan, J., dissenting) ("I believe that Vernon Madison is currently incompetent. I therefore do not think that Alabama can, consistent with the Constitution, execute him").

Mr. Madison's competency that undersigned counsel has become aware of and counsel needs sufficient time to evaluate the implication of these new facts.

Undersigned counsel is working diligently and expeditiously to resolve these outstanding legal and factual questions. Until these matters are resolved, this Court should refrain from acting on the State's motion and decline to set an execution date at the present time.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on November 9, 2017, a copy of the
attached pleading was sent by email to:

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