

NO. _____

In The
Supreme Court of the United States

—◆—
TRAVIS TREVINO RUNNELS,

Petitioner,

v.

LORIE DAVIS, Director,
Texas Department of Criminal Justice,
Correctional Institutions Division,

Respondent.

—◆—
ON PETITION FOR WRIT OF CERTIORARI
TO THE TEXAS COURT OF CRIMINAL APPEALS

—◆—
APPLICATION FOR STAY OF EXECUTION
—◆—

Mark J. Pickett
Counsel of Record
THE CENTER FOR DEATH PENALTY LITIGATION
123 West Main Street, Suite 700
Durham, North Carolina 27701
(919) 956-9545
mpickett@cdpl.org

Counsel for Petitioner

Janet Gilger-VanderZanden
13785 Research Boulevard,
Suite 125
Austin, Texas 78750
(512) 524-9753
janet@jvzlaw.com

Counsel for Petitioner

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	ii
MR. RUNNELS IS ENTITLED TO A STAY OF EXECUTION	2
I. Mr. Runnels Has Demonstrated A Reasonable Probability That This Court Will Grant The Petition For a Writ of Certiorari And a Fair Prospect That It Will Reverse the Texas Court of Criminal Appeals’ Decision.....	2
II. The Balance of Equities—Including the Irreparable Harm Mr. Runnels Will Suffer Absent a Stay of Execution—Weighs Strongly In Favor of a Stay.....	4
CONCLUSION.....	5

TABLE OF AUTHORITIES

	<u>Page(s)</u>
 <u>CASES</u>	
<i>Barefoot v. Estelle</i> , 463 U.S. 880 (1983)	2, 4
<i>Estrada v. State</i> , 313 S.W.3d 274 (Tex. Crim. App. 2010)	3
<i>Gardner v. Florida</i> , 430 U.S. 349 (1977)	5
<i>Lonchar v. Thomas</i> , 517 U.S. 314 (1996)	2
<i>Velez v. State</i> , AP-76051, 2012 WL 2130890 (Tex. Crim. App. June 23, 2012)	3
<i>Wainwright v. Booker</i> , 473 U.S. 935 (1985)	4
 <u>STATUTES</u>	
28 U.S.C. § 2101(f)	2
Texas. Tex. Penal Code § 37.071 sec. 2(b)(1)	3
 <u>RULE</u>	
Sup. Ct. R. 23	2

IN THE
SUPREME COURT OF THE UNITED STATES

No. _____

TRAVIS TREVINO RUNNELS,

Petitioner,

v.

LORIE DAVIS, Director,
Texas Department of Criminal Justice, Correctional Institutions Division,

Respondent.

CAPITAL CASE
EXECUTION SCHEDULED DECEMBER 11, 2019 at 6:00 PM CDT

APPLICATION FOR STAY OF EXECUTION

To the Honorable Justice Samuel Alito, as Circuit Justice for the United States
Court of Appeals for the Fifth Circuit:

The State of Texas has scheduled the execution of Petitioner Travis Trevino Runnels for **Wednesday, December 11, 2019, at 6:00 CDT**. Mr. Runnels respectfully requests a stay of execution pending the consideration and disposition of the petition for writ of certiorari that he is filing simultaneously with this application.

MR. RUNNELS IS ENTITLED TO A STAY OF EXECUTION

Mr. Runnels respectfully requests that this Court stay his execution, pursuant to Supreme Court Rule 23 and 28 U.S.C. § 2101(f), pending consideration of his concurrently filed petition for writ of certiorari. *See Barefoot v. Estelle*, 463 U.S. 880, 889 (1983) (“Approving the execution of a defendant before his [petition] is decided on the merits would clearly be improper.”); *see also Lonchar v. Thomas*, 517 U.S. 314, 320 (1996) (holding that a court may stay an execution if needed to resolve issues raised in initial petition).

A stay of execution is appropriate if an applicant makes a four-part showing: first, that there is a “reasonable probability” that four Justices of the Court will vote to issue a writ of certiorari; second, that there is a “fair prospect” that a majority of the Court will reverse the decision below; third, that irreparable harm will likely result if the stay is not granted; and fourth, that the “balance [of] the equities” weighs in favor of a stay, based on the relative harms to the applicant and respondent, as well as the interests of the public. *See Barefoot*, 463 U.S. at 895. Mr. Runnels satisfies each of these factors.

I. Mr. Runnels Has Demonstrated A Reasonable Probability That This Court Will Grant The Petition For a Writ of Certiorari And a Fair Prospect That It Will Reverse the Texas Court of Criminal Appeals’ Decision.

Mr. Runnels’ contemporaneously-filed Petition for Writ of Certiorari details the strength of his claim. Given the extreme injustice in this case, there is a fair probability that this Court will grant the Petition and reverse the Texas Court of Criminal Appeals’ decision.

Mr. Runnels was sentenced to death based on the false “expert” testimony of Texas Special Prosecution Unit criminal investigator A.P. Merillat. Merillat’s testified for the purpose of proving that Mr. Runnels posed a future likelihood of committing “criminal acts of violence that would constitute a continuing threat to society,” which the jury must find to impose a death sentence in Texas. Tex. Penal Code § 37.071 sec. 2(b)(1). Because Mr. Runnels’ pleaded guilty and his trial counsel presented no mitigating evidence in the penalty phase, his case turned almost entirely on this issue.

Merillat was not involved in the investigation of Mr. Runnels’ alleged crime. Nonetheless, he told the jury that Mr. Runnels would be classified “automatically” as a “G-3” (i.e. general population) mid-grade offender and would enjoy a variety of freedoms, such as the ability to move about the prison unrestricted; the option to participate in work, visitation, and worship; and the opportunity to have frequent and unconfined access to other inmates and staff. This testimony was entirely false. As detailed in Mr. Runnels’ Petition, based on the Texas Department of Criminal Justice’s own rules and procedures, he would instead have been placed in administrative segregation, a highly restrictive environment that would require him to be carefully restrained and supervised at all times while outside his cell. In two prior cases where the Texas Court of Criminal Appeals found that Merillat testified falsely on similar matters, the defendants were granted new capital sentencing hearings. *Estrada v. State*, 313 S.W.3d 274 (Tex. Crim. App. 2010); *Velez v. State*, AP-76051, 2012 WL 2130890 (Tex. Crim. App. June 23, 2012) (unpublished). The Texas

court ignored its own precedent to deny Mr. Runnels' relief and expedite his execution.

The prejudicial effect of Merillat's testimony cannot be overstated: Mr. Runnels' jury was led to believe he would be a free man within the prison walls under a life sentence, and that prison officials would be unable to imprison him in a secure environment regardless of his past behavior. This Court has a strong interest in ensuring the integrity of state death penalty systems, and nothing is more critical to the basic integrity of those systems than ensuring that a death sentence cannot be secured based on materially false testimony.

II. The Balance of Equities—Including the Irreparable Harm Mr. Runnels Will Suffer Absent a Stay of Execution—Weighs Strongly In Favor of a Stay.

There is no more extreme harm than that which Mr. Runnels faces here. *See Wainwright v. Booker*, 473 U.S. 935, 935 n.1 (1985) (Powell, J. concurring) (irreparable harm “is necessarily present in capital cases”). Absent a stay, Mr. Runnels will be executed based on unchallenged, false testimony, and without ever having a single witness called to testify on his behalf in any proceeding.

In contrast, the State will not be substantially injured by the issuance of a stay. As in all cases, the State has an interest in the enforcement of the judgments of its courts. However, “a death sentence cannot begin to be carried out by the State while substantial legal issues remain outstanding.” *See Barefoot*, 463 U.S. at 888. As explained herein and in the simultaneously filed Petition for Writ of Certiorari, Mr. Runnels' case presents a substantial question regarding the legality of the State's use of false expert testimony in a capital sentencing proceeding.

Finally, the public has an interest in ensuring that executions are carried out fairly and consistently with the laws of this country. In *Gardner v. Florida*, 430 U.S. 349 (1977), Justice Stevens explained: “[D]eath is a different kind of punishment from any other which may be imposed in this country.” *Id.* at 357. It is thus “of vital importance to the defendant and to the community that any decision to impose the death sentence be, and appear to be, based on reason.” *Id.* at 358. Mr. Runnels’ death sentence was based not on reason, but on demonstrably false expert testimony. The public interest thus supports the hearing and adjudication of Mr. Runnels’ claim.

CONCLUSION

Given this record, this Court should grant a stay of execution to allow for the full and fair review of Mr. Runnels’ claim.

Dated: December 6, 2019

Respectfully submitted,

/s/ Mark J. Pickett

Mark J. Pickett

Counsel of Record

Center for Death Penalty Litigation

123 W. Main Street, Suite 700

Durham, NC 27701

Email: mpickett@cdpl.org

(919) 956-9545

NC State Bar No.: 39986

/s/ Janet Gilger-VanderZanden

Janet Gilger-VanderZanden

13785 Research Blvd., Suite 125

Austin, TX 78750

512-524-9753

Texas State Bar No.: 24079978

janet@jvzlaw.com

Counsel for Petitioner Travis Trevino Runnels

APPENDIX A

Order, *Ex Parte Travis Trevino Runnels, Applicant*, No. WR-46, 226-03, Texas Court of Criminal Appeals, December 2, 2019



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-46,226-03

EX PARTE TRAVIS TREVINO RUNNELS, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS AND MOTION FOR
STAY OF EXECUTION IN CAUSE NO. 48950-02-D-WR
IN THE 320TH JUDICIAL DISTRICT COURT
POTTER COUNTY**

Per curiam.

ORDER

We have before us a post conviction application for a writ of habeas corpus filed pursuant to the provisions of Texas Code of Criminal Procedure article 11.071 and a motion for a stay of execution.

In October 2005, a jury found Applicant guilty of the January 2003 capital murder of a prison employee. The jury answered the special issues submitted pursuant to Article 37.071, and the trial court, accordingly, set Applicant's punishment at death. This Court

affirmed Applicant's conviction and sentence on direct appeal. *Runnels v. State*, No. AP-75,318 (Tex. Crim. App. Sept. 12, 2007) (not designated for publication).

In his initial application for a writ of habeas corpus, Applicant raised eleven claims, including claims that his counsel performed deficiently and claims attacking the constitutionality of Article 37.071 and the death penalty. After reviewing the merits of the claims, this Court denied relief. *Ex parte Runnels*, No. WR-46,226-02 (Tex. Crim. App. March 7, 2012) (not designated for publication).

Applicant filed this his first subsequent writ application in the convicting court on September 13, 2019. Applicant raises a single claim in his application in which he asserts that the State violated his right to due process when it presented the false and misleading testimony of A.P. Merillat.

We have reviewed the application and find that the allegation does not satisfy the requirements of Article 11.071 § 5. Accordingly, we dismiss the application as an abuse of the writ without reviewing the merits of the claim raised, and we deny Applicant's motion to stay his execution. Art.11.071 § 5(c).

IT IS SO ORDERED THIS THE 2nd DAY OF DECEMBER, 2019.

Do not publish

APPENDIX B

Warrant of Execution, *State v. Runnels*, No. 48, 950-D,
320th District Court in and for Potter County, Texas, August 7, 2019

“Whereas the defendant, **TRAVIS TREVINO RUNNELS**, has been adjudged to be guilty of the offense of **Capital Murder** by the jury and the jury having further answered “Yes” to Special Issue No. 1 and “No” to Special Issue No. 2; and the law providing that on such jury finding the Court shall sentence the defendant to death.

It is, therefore, the Order of the Court that the defendant, **TRAVIS TREVINO RUNNELS**, is sentenced to death.”

On Thursday, August 1, 2019, this cause again being called and the Court having received the Mandate of the Texas Court of Criminal Appeals affirming the Judgment thereupon set the time for the execution of Travis Trevino Runnels, on December 11, 2019 at any time after the hour of 6:00 P.M., as fully appears in the Order Setting Date of Execution of said Court attached hereto:

“IT IS HEREBY ORDERED that the Defendant, Travis Trevino Runnels, who has been adjudged to be guilty of capital murder as charged in the indictment and whose punishment has been assessed by the verdict of the jury and judgment of the Court at Death, shall be kept in custody by the Director of the Texas Department of Criminal Justice, Institutional Division, until the 11th day of December, 2019, upon which day, at the Texas Department of Criminal Justice, Institutional Division, at some time after the hour of six o’clock p.m., in a room arranged for the purpose of execution, the

said Director, acting by and through the executioner designated by said Director, as provided by law, **IS HEREBY COMMANDED, ORDERED AND DIRECTED TO CARRY OUT THIS SENTENCE OF DEATH BY INTRAVENOUS INJECTION OF A SUBSTANCE OR SUBSTANCES IN A LETHAL QUANTITY SUFFICIENT TO CAUSE THE DEATH OF THE SAID TRAVIS TREVINO RUNNELS UNTIL THE SAID TRAVIS TREVINO RUNNELS IS DEAD.** Such procedure shall be determined and supervised by the said Director of the Texas Department of Criminal Justice, Institutional Division.”

These are, therefore, to command you to execute the aforesaid Judgment and Sentence at any time after the hour of 6:00 P.M. on December 11, 2019, at the Institutional Division of the Texas Department of Criminal Justice, at Huntsville, Texas, by intravenous injection of a substance or substances in a lethal quantity sufficient to cause death and until such convict is dead, utilizing such procedure to be determined and supervised by you, the Director of the Institutional Division of the Texas Department of Criminal Justice, at Huntsville, Texas.

Herein fail not, and due return make hereof in accordance with law.

Witness my signature, and seal of office on this 17th day of August, 2019.


Carley Snider
Potter County District Clerk

COPY
FILED
CARLEY SNIDER
DISTRICT CLERK

August 7, 2019 9:27 am
POTTER COUNTY, TEXAS
BY BC DEPUTY

NO. 48,950-D

THE STATE OF TEXAS § IN THE 320TH DISTRICT COURT

 §

VS. § IN AND FOR

 §

TRAVIS TREVINO RUNNELS § POTTER COUNTY, TEXAS

ORDER SETTING EXECUTION DATE

The Court has reviewed the State's Motion to Set Execution Date and finds that the motion should be granted; and whereas

The Defendant, Travis Trevino Runnels, was previously sentenced to death by the Court in the presence of his attorneys; and

There being no stays of execution in effect in this case, it is the duty of this Court to set an execution date in the above numbered and styled cause, and the Court now enters the following ORDER:

IT IS HEREBY ORDERED that the Defendant, Travis Trevino Runnels, who has been adjudged to be guilty of capital murder as charged in the indictment and whose punishment has been assessed by the verdict of the jury and judgment of the Court at Death, shall be kept in custody by the Director of the Texas Department of Criminal Justice, Institutional Division, until the 11th day of December, 2019, upon

A CERTIFIED COPY
Page 1 of 3
CARLEY SNIDER
District Clerk
Potter County, Texas
By BC Deputy

BA CE 6:19 * P CV D A T 9:20:00 11:09:00 AM FC Control Daylight Time * SMP: CAL MAYBE A VIO * DNIS: 044

The Clerk of this Court is ordered to forward a copy of this Order to Defendant's counsel, Mark Pickett The Center for Death Penalty Litigation, 123 West Main Street, Suite 700, Durham, North Carolina 27701, mpickett@cdpl.org, and Janet Gilger-VanderZanden, 13785 Research Blvd., Suite 125, Austin, Texas 78701, janet@jvzlaw.com, Jay Clendenin, Assistant Attorney General with the Criminal Appeals Division of the Texas Attorney General's Office, counsel for the State at Jay.Clendenin@oag.texas.gov and to the Director of the Office of Capital and Forensic Writs, Benjamin Wolff, Benjamin.Wolff@ocfw.texas.gov.

Signed this 5th day of August, 2019.



Pamela Sirmon
 Presiding Judge
 320th Judicial District Court
 Potter County, Texas

I, Carley Snider, Clerk of the District Courts and County Courts at Law, in and for Potter County, Texas, do hereby certify that the foregoing instrument is a correct copy of the original on file in this office.
 ATTESTED this 7 day of August, 2019
 By [Signature] Deputy

A CERTIFIED COPY
 Page 3 of 3
 CARLEY SNIDER
 District Clerk
 Potter County, Texas
 By [Signature] Deputy

RECEIPT FOR DEATH WARRANT

(This portion to be completed by Texas Department of Criminal Justice Institutional Division personnel.)

THE STATE OF TEXAS

CAUSE NO 48950-D

VS

Travis Trevino Runnels

320th DISTRICT COURT
POTTER COUNTY, TEXAS

I, Bryan Collier by Norma Perdomo, have received the DEATH

WARRANT for **Travis Trevino Runnels**, TDCJID # 999505, on

August 19, 20 19. I will deliver said warrant to :

Bryan Collier, Director of the Texas Department of

Criminal Justice Institutional Division on : August 19, 20 19.

Signature: [Signature]
Title: Program Supervisor I
Date: 08-19-19

CERTIFICATE OF DELIVERY OF DEATH WARRANT

(This portion to be completed by Potter County Sheriff personnel. Return to the District Clerk of Potter County.)

I hereby certify that the DEATH WARRANT issued on August 7, 2019 in the above captioned and styled cause was delivered to the Director of the Texas Department of Criminal Justice Institutional Division, at Huntsville, Texas on:

August 19th, 20 19, at 9:23 o'clock A.m.

BRIAN THOMAS, SHERIFF
POTTER COUNTY, TEXAS
BY [Signature] DEPUTY

(Return entire receipt to District Clerk, Potter County)

BACK 8/19 * POCVD AT 8/20/2019 11:08:00 AM IC Control Delight Time: 8/20/2019 11:08:00 AM SYB: CACAL MAYBEA YIC * DNIS: 0446