

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 2019

No. _____

BILLY JOE WARDLOW,
Petitioner,

v.

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

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit

CAPITAL CASE–EXECUTION JULY 8, 2020

**APPLICATION FOR STAY OF EXECUTION
PENDING FINAL DISPOSITION OF
PETITION FOR WRIT OF CERTIORARI**

Petitioner, Billy Joe Wardlow, respectfully requests that the Court stay his scheduled execution pending final disposition of his Petition for Writ of Certiorari. In support of this request, Mr. Wardlow sets forth the following:

1. Mr. Wardlow is a condemned Texas prisoner confined at the Polunsky Unit of the Texas Department of Criminal Justice. The State of Texas has scheduled his execution for July 8, 2020. *See* Exhibit (order setting execution of Mr. Wardlow).

2. Mr. Wardlow has filed along with this stay application a Petition for Writ of Certiorari, presenting the following questions:

In denying Mr. Wardlow’s federal habeas petition, the district court ruled that his claims were procedurally barred but also without merit. The basis for the procedural bar was removed three years later by the Texas Court of Criminal Appeals when it reversed its procedural dismissal of Wardlow's initial state

habeas application. Mr. Wardlow returned to federal district court on a Fed. R. Civ. Proc. 60(b) motion arguing that the procedural bar ruling had caused the court to give perfunctory review to the merits of his claims. The district court held that the motion was a successive petition. On appeal, the Fifth Circuit agreed with the district court, without undertaking any analysis, or remanding to the district to conduct any analysis, of whether the procedural bar ruling did impact the district court's determination of the merits.

These proceedings give rise to the following Questions:

1. Whether a Rule 60(b) motion arguing that a procedural defect affected the district court's determination of the merits of the claims in a federal habeas petition is a proper 60(b) motion or an improper successive habeas petition?
2. Whether the conflicting answers given to this question by the United States Courts of Appeals for the Fifth and Tenth Circuits require resolution by this Court?
3. A stay of execution is warranted where there is (1) a reasonable probability that four members of the Court would consider the underlying issue sufficiently meritorious for the grant of certiorari; (2) a significant possibility of reversal of the lower court's decision; and (3) a likelihood that irreparable harm will result if no stay is granted. *Barefoot v. Estelle*, 463 U.S. 880, 895 (1983). Mr. Wardlow satisfies these criteria.
4. For the reasons set forth in the Petition for Writ of Certiorari, a reasonable probability exists that four Members of the Court would consider the underlying issue sufficiently meritorious for the grant of certiorari and would reverse the decision of the United States Court of Appeals for the Fifth Circuit.
5. In addition, irreparable harm will ensue absent a stay. Absent a stay, Mr. Wardlow will be executed despite a strong likelihood that he has been denied the protection of the Eighth and Fourteenth Amendments.
6. Accordingly, the equities strongly favor Mr. Wardlow.

FOR THESE REASONS, Mr. Wardlow asks that the Court stay his execution pending final disposition of his Petition.

Respectfully submitted,

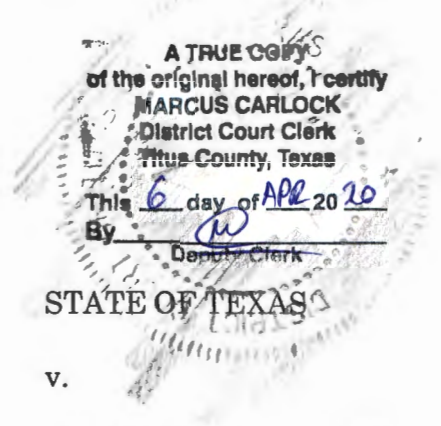
RICHARD BURR*
PO Box 525
Leggett, Texas 77350
(713) 628-3391
(713) 893-2500 fax

A handwritten signature in black ink, appearing to read "Richard Burr", with a long horizontal flourish extending to the right.

Counsel for Billy Joe Wardlow

*Counsel of Record, Member of the Bar of the Supreme Court of the United States

Exhibit



4/6/2020 8:10 AM

Marcus Carlock
District Clerk
Elodia Chapa

Cause No. CR12764

STATE OF TEXAS
v.
BILLY JOE WARDLOW

§ IN THE 76TH DISTRICT COURT
§
§ OF
§
§ TITUS COUNTY, TEXAS

EXECUTION ORDER

You, BILLY JOE WARDLOW, were indicted by the Grand Jury of Morris County, Texas, and charged with the offense of capital murder in cause numbers 6989, 7127, and 7130. After venue was transferred to Titus County, Texas, a jury in this Court returned a verdict finding you guilty of the offense of capital murder on February 8, 1995, in cause number 12,764. On February 11, 1995, the same jury in this Court returned answers to the special issues, submitted to the jury at punishment pursuant to Article 37.071 of the Texas Code of Criminal Procedure, and this Court, in accordance with the jury's findings at punishment, assessed your punishment at death. The judgment of this Court was reviewed by the Texas Court of Criminal Appeals on direct appeal and it was affirmed by that court on April 2, 1997, with mandate issued on August 18, 1997. Subsequently, on September 15, 2004, the Court of Criminal Appeals dismissed your initial application for writ of habeas corpus. Thereafter, the District Court for the Eastern District of Texas, Sherman Division, denied your federal petition for writ of habeas corpus on August 21, 2017, and the United States Court of Appeals for the Fifth Circuit denied your application for a Certificate of Appealability on October 22, 2018. Afterwards, the United States Supreme Court denied your petition for writ of certiorari on October 15, 2019. A previous execution date was set by this Court for April 29, 2020. This Court now proceeds to modify your prior execution date and now enters the following order.

IT IS HEREBY ORDERED by this Court that the prior execution warrant of October 25, 2019, setting an April 29, 2020 execution date for BILLY JOE WARDLOW, is RECALLED.

IT IS HEREBY ORDERED by this Court that you, BILLY JOE WARDLOW, having been adjudged guilty of capital murder and having been assessed punishment at death, in accordance with the findings of the jury and the judgment of this Court, shall at some time after the hour of 6:00 p.m. on the 8th day of July, 2020, be put to death by an executioner designated by the Director of the Correctional Institutions Division of the Texas Department of Criminal Justice, who shall cause a substance or substances in a lethal quantity to be intravenously injected into your body sufficient to cause your death and until your death, such execution procedure to be determined and supervised by the said Director of the Correctional Institutions Division of the Texas Department of Criminal Justice.

It is ORDERED that the Clerk of this Court shall issue a death warrant, in accordance with this sentence, to the Director of the Correctional Institutions Division of the Texas Department of Criminal Justice, and shall deliver such warrant to the Sheriff of Titus County, Texas to be delivered by him to the Director of the Correctional Institutions Division of the Texas Department of Criminal Justice together with the defendant, BILLY JOE WARDLOW, if not previously delivered.

The Defendant, BILLY JOE WARDLOW, is hereby remanded to the custody of the Sheriff of Titus County, Texas, to await transfer to Huntsville, Texas, if not previously delivered, and the execution of this sentence of death.

DONE AND ENTERED this 3rd day of April, 2020.



ANGELA SAUCIER
Presiding Judge
76th District Court
Titus County, Texas