

No. _____
(Capital Case)

In the
Supreme Court of the United States

QUINTIN PHILLIPPE JONES, Petitioner,

v.

BOBBY LUMPKIN, Respondent.

On Petition for Writ of Certiorari to the
Texas Court of Criminal Appeals

MOTION TO STAY THE EXECUTION

**QUINTIN PHILLIPPE JONES IS SCHEDULED TO BE
EXECUTED ON MAY 19, 2021**

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Dated: May 17, 2021

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**TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF THE
UNITED STATES:**

Petitioner Quintin Phillippe Jones respectfully files this Motion to Stay the Execution scheduled for May 19, 2021 at 6:00 p.m. CST:

SUMMARY OF REQUESTED RELIEF

1. Jones requests that the Court stay his execution date of May 19, 2021 so that he may pursue the relief requested in the Petition for Writ of Certiorari filed on May 17, 2021.

JURISDICTION

2. This Court has jurisdiction to enter a stay under 28 U.S.C. § 2101(f), 28 U.S.C. § 1651, 28 U.S.C. § 2251, and Supreme Court Rule 23. Jones has already sought, and been denied, a stay in the court below.

PROCEDURAL HISTORY

3. **Indictment, trial, and sentencing:** Jones was indicted on December 1, 1999 for Capital Murder during a robbery that occurred on or about September 11, 1999 of Berthena Bryant, his great-aunt. (App.003-004). The trial on guilt-innocence began on February 15, 2001. (RR29). On February 21, 2001, Jones was convicted as charged in the Indictment of Capital Murder under Tex. Penal Code § 19.03(a). (CR.408-410; App.005-014). On March 5, 2001, the jury answered the special issues under Tex. Code Crim. Proc. Art. 37.071 and found both that Jones was likely to commit future acts of violence and that there were insufficient mitigating

circumstances to warrant a life sentence, and sentenced Jones to death. (App.015-019).

4. **Jones’s conviction and death sentence are affirmed on direct appeal:** On November 5, 2003, the Texas Court of Criminal Appeals (“TCCA”) affirmed Jones’s conviction and death sentence.¹ The appeal raised 16 points of error, all of which were overruled by the TCCA.

5. **State-habeas proceedings:** State habeas counsel Strickland failed to file a timely state habeas petition. On September 27, 2004, almost a month after the deadline, Strickland filed the application (“First Application”), raising eight claims for relief, two addressing the admission of evidence, four addressing the timeliness of the appointment of counsel, one addressing newly discovered impeachment evidence, and one addressing the effects of serotonin levels on behavior.² Six of these claims were found to be not cognizable or procedurally defaulted because they should have been—but were not—raised on direct appeal.³ The remaining two claims were found by the TCCA to lack evidentiary support.⁴

6. **Federal habeas proceedings.** After the TCCA rejected the First Application, Jones asked to have substitute or additional counsel appointed. However, the district court appointed Strickland, directing him to timely file the petition. Yet, Strickland filed the federal petition 149 days—almost five months—late.

¹ *Jones v. State*, 119 S.W.3d 766 (Tex.Crim.App. 2003).

² *Ex parte Jones*, WR-57,299-01, 2005 Tex.Crim.App.Unpub.LEXIS 254 (Tex.Crim.App. Sept. 14, 2005)

³ *Id.*; See *Jones v. Stephens*, No. 4:05-CV-0638-Y (N.D.Tex.) (DKTS. 19-18; 122-3-4).

⁴ *Jones*, 2005 Tex.Crim.App.Unpub.LEXIS 254. On September 14, 2005, the TCCA denied the state habeas application. *Jones*, 2005 Tex.Crim.App.Unpub.LEXIS 254.

In the petition filed on September 14, 2006 (“First Petition”), Strickland asserted two claims: (1) that the death sentence should be vacated based on punishment evidence obtained in violation of the Fifth Amendment (*Miranda* issue); and (2) ineffective assistance of counsel.⁵ Jones repeatedly wrote to Strickland asking for updates on his case, but Strickland failed to respond. On June 4, 2006, Jones wrote a letter to the federal district court asking for help. *Jones*, No. 4:05-CV-0638-Y (N.D.Tex.) (ROA.838); (DKT. 35-15). The district court forwarded the letter to Strickland with an *ex parte* letter, stating that it was “fair for Jones to ask...questions [about the appeal and what to expect]... [and it] believe[d] that an update to Jones is in order.” *Jones*, No. 4:05-CV-0638-Y (N.D.Tex.) (ROA.839); (DKT. 35-16).

7. On November 17, 2006, the government filed a motion to dismiss the federal habeas petition. *Jones*, No. 4:05-CV-0638-Y (N.D.Tex.) (ROA.751-762) (DKT. 27). Strickland did not file a response, and on September 21, 2007, the federal district court dismissed Jones’s habeas application as untimely. (ROA.763-769); (DKT. 28). Strickland did not file a notice of appeal or inform Jones that he was not filing the notice. The federal district court held that equitable tolling, which allows a late filing in certain circumstances, was not available because Strickland failed to explain the delay in filing the First Petition. *Jones*, No. 4:05-CV-0638-Y (N.D.Tex.) (ROA.768); (DKT. 28, p. 6).

8. On March 21, 2008, the federal district court removed Strickland as counsel and appointed Lydia Brandt. *Jones*, No. 4:05-CV-0638-Y. (ROA.772-773);

⁵ *Jones*, No. 4:05-CV-0638-Y (N.D.Tex.) (DKT. 19) (ROA.84-119).

(DKT. 31). On May 29, 2008, Ms. Brandt filed a motion for relief from judgment under Fed. Rule Civ. Proc. 60(b), *Jones*, No. 4:05-CV-0638-Y (ROA.780-844); (DKT. 35), which the district court granted, permitting Jones to respond to the government's motion to dismiss the petition as time barred. *Jones*, No. 4:05-CV-0638-Y; (ROA.891-900); (DKT. 43). On February 5, 2009, Jones responded and argued that equitable tolling was warranted because Strickland deprived Jones of his statutory right to representation. *Jones*, No. 4:05-CV-0638-Y (ROA.988-1102); (DKT. 55). On February 12, 2009, Jones filed a motion for leave to file an amended petition, asking to include allegations of ineffective assistance of trial counsel. *Jones*, No. 4:05-CV-0638-Y (ROA.1105-1209); (DKT. 57). In March 2009, the district court denied leave to amend and dismissed Jones's petition, concluding that equitable tolling was not warranted. *Jones*, No. 4:05-CV-0638-Y (ROA.1223-1234); (DKT. 59). After the Fifth Circuit reversed and remanded, on August 15, 2013, the district court granted the government's motion to dismiss the petition as time-barred under 28 U.S.C. § 2244(d).⁶

9. The district court ultimately vacated the order dismissing the case and reopened it, finding that "it is difficult to overlook the fact that Jones's concerns about Strickland's ability to provide 'competent' and 'professional' representation proved in retrospect to be justified."⁷ Further, the district court found Jones to be entitled to equitable tolling. *Id.*; *Jones*, No. 4:05-CV-0638-Y (DKT. 113, p. 9) (ROA.1679).

⁶ *Jones v. Stephens*, 2013 U.S. Dist. LEXIS 115325 (N.D. Tex., Aug. 15, 2013) (ROA.1574-1601).

⁷ *Jones*, No. 4:05-CV-0638-Y (DKT. 113, p. 4) (ROA.1671-1674); *Jones v. Stephens*, 998 F.Supp.2d 529, 532 (N.D. Tex. Feb. 6, 2014).

10. On June 3, 2014, Jones asked the district court to authorize mitigation investigative services to assist counsel under 18 U.S.C. § 3599(f) because Ms. Brandt discovered that trial counsel had failed to conduct a thorough background investigation as required by the Sixth Amendment. There was no social history, no history about family lineage to aid in identifying grounds for mitigation at the sentencing phase, nor was there a timeline to show correlations between significant events in Jones's life and behaviors. On June 20, 2014, the federal district court denied the motion for funds for investigative services.⁸

11. On June 22, 2014, Jones filed the amended federal habeas petition ("Second Petition"), asserting: (1) ineffective assistance of counsel and failure to appoint counsel at a critical stage; (2) ineffective assistance of counsel based on *Wiggins* (failure to investigate and develop mitigating evidence); (3) ineffective assistance of counsel based on the failure to investigate and develop condition-of-mind evidence; (4) ineffective assistance of counsel based on failure to seek timely evaluations of his mental condition regarding the reliability or voluntariness of his confession and competency to stand trial; and (5) that the Court should vacate Jones's death sentence based on punishment evidence obtained in violation of the Fifth Amendment (*Miranda* issue). *Jones*, No. 4:05-CV-0638-Y (DKT. 129); (ROA.1951-2196).

⁸ *Jones*, No. 4:05-CV-0638-Y (DKT. 127) (ROA.1932-1947); *Jones v. Stephens*, 2014 U.S. Dist. LEXIS 84098 (N.D. Tex., June 20, 2014)

12. On January 13, 2016, the district court denied the Second Petition.⁹ On February 8, 2016, Jones filed a motion under Fed. Rule Civ. Proc. 59(e). (DKT. 154) (ROA.2523-2533). This motion was denied on March 16, 2016.¹⁰

13. **Proceedings before the Fifth Circuit and the Supreme Court.** Jones appealed the denial of the Second Petition and the Rule 59(e) motion, raising two issues for which a certificate of appealability was granted by the Fifth Circuit: (1) deprivation of his right under 18 U.S.C. § 3599 to quality representation before the federal district court; and (2) during the sentencing phase, the admission of a confession to serious crimes obtained in violation of *Miranda* can never be harmless unless the defendant made the same confession to a nonstate actor that was admitted.¹¹ On April 15, 2019, the Fifth Circuit affirmed the denials of the petition and Rule 59(e) motion.¹² On April 22, 2019, Jones petitioned for rehearing, which was denied on June 18, 2019.¹³

14. Jones sought certiorari in this Court on the issue of the deprivation of his rights under 18 U.S.C. § 3599 to quality representation before the district court. The petition was denied on March 23, 2020.¹⁴

⁹ *Jones*, No. 4:05-CV-0638-Y (DKT. 152) (ROA.2424-2522); *Jones v. Stephens*, 157 F.Supp.3d 623 (N.D.Tex. Jan. 13, 2016)

¹⁰ *Jones*, No. 4:05-CV-0638-Y (DKT. 156).

¹¹ *Jones v. Davis*, 673 Fed.Appx. 369 (5th Cir. 2016)

¹² *Jones v. Davis*, 922 F.3d 271 (5th Cir. 2019).

¹³ *Jones v. Davis*, 927 F.3d 365 (5th Cir. 2019).

¹⁴ *Jones v. Davis*, 140 S.Ct. 2519 (2020).

15. **Jones's execution is set for May 19, 2021.** On November 18, 2020, the convicting court granted the State's motion to set Jones's execution date and set it for May 19, 2021. (App.028-033).

16. **Jones files the second state habeas application.** On May 6, 2021, Jones filed an Application for Writ of Habeas Corpus under Tex. Code Crim. Proc. Art. 11.071 § 5 ("Second Application), raising three grounds: In Ground 1, Jones argued that his death sentence is based on based on false and misleading testimony in violation of the due process clause of the Fourteenth Amendment because a substantial part of the State's case during the punishment phase was the testimony of Dr. Price, who using the Hare Psychopathy Checklist (PCL-R), told the jury that he had "diagnosed" Jones as a "psychopath." Price's testimony has since been discredited, undermining the foundation upon which the State sought imposition of the death penalty.

17. In Ground 2, Jones argued that the judgment and death sentence were obtained in violation of due process under the Fourteenth Amendment because it was based on the false scientific evidence and testimony of Dr. Price concerning his purported future dangerousness.

18. In Ground 3, Jones argued that based on this Court's 2017 holding in *Moore v. Texas*, 137 S.Ct. 1039, 1058 (2017), he may be intellectually disabled, so the imposition of the death penalty violates his Eighth and Fourteenth Amendment rights under *Atkins*. Further, additional investigation should be allowed to explore this claim because the first state habeas attorney did not address or pursue this claim

(and did not even file the application on time), and Jones was not allowed investigative services by the district court. Jones also filed in the trial court a motion to withdraw the execution date and a motion for a stay of execution in the TCCA.

19. On May 12, 2021, the TCCA dismissed the Second Application, finding that Jones failed to make a prima facie showing on any of his Grounds, and that the Grounds asserted therefore failed to satisfy the requirements of Article 11.071 § 5. (App.001-002). The TCCA dismissed the Second Application as an abuse of the writ without reviewing the merits of the claim raised per Article 11.071 § 5(c). (App.002). The TCCA also denied Jones's motion to stay the execution. (App.002).

REASONS FOR GRANTING THE STAY OF EXECUTION

20. Jones is entitled to a stay if he can show (1) a substantial likelihood of success on the merits of his claims; (2) that the requested action is necessary to prevent irreparable injury; (3) that the threatened injury outweighs the harm the stay would inflict upon the non-moving party; and (4) that the stay would serve the public interest. *Nken v. Holder*, 556 U.S. 418, 434 (2009). Where a stay applicant is a death row inmate who has brought a constitutional challenge to his execution, the applicant's entitlement to a stay of execution "turns on whether [he can] establish a likelihood of success on the merits." *Glossip v. Gross*, 135 S. Ct. 2726, 2737 (2015). This is because the finality of death, along with the overriding interest that a citizen not be executed in a manner or with a means that offends the federal Constitution, is conclusive of the other elements needed to justify a preliminary injunction.

21. As set forth below, Jones has a substantial likelihood of succeeding on his Eighth Amendment and Fourteenth Amendment claims, and the equities weigh in his favor. He is therefore entitled to a temporary stay of execution pending the resolution of his claims.

22. Jones's petition makes two compelling arguments that challenge his death sentence. First, based on *Moore*, Jones is intellectually disabled and the imposition of the death penalty violates his Eighth and Fourteenth Amendment rights. Second, Jones's death sentence is based on false and misleading testimony in violation of the due process clause of the Fourteenth Amendment because a substantial part of the State's case during the punishment phase was based on the testimony of Dr. Price that was inaccurate and unsound. The facts supporting this motion for a stay are articulated in greater detail in Jones's petition for certiorari filed this same day and are incorporated by reference in this motion.

23. Further, irreparability of injury is clear. Without a stay, Jones will be executed without a full and fair review of the constitutionality of his death sentence. In a capital case, the death penalty is "irreversible," and thus, irreparable injury "weighs heavily" in Jones's favor. *See Pruett v. Choate*, 711 F. Appx. 203, 207 (5th Cir. 2017), *citing O'Bryan v. Estelle*, 691 F.2d 706, 708 (5th Cir. 1982); *see also Wainwright v. Booker*, 473 U.S. 935, 935 n.1 (1985) (Powell, J. concurring) (recognizing that death by execution constitutes irreparable injury).

24. In addition, a stay of execution is in the public interest, as "it is always in the public interest to prevent the violation of a party's constitutional rights." *G &*

V Lounge, Inc. v. Michigan Liquor Control Commn., 23 F.3d 1071, 1079 (6th Cir. 1994). To the extent the State argues that the public has an interest in the finality of criminal convictions, here, the Constitution compels impairment of such an interest. See, e.g., *Lee v. Kelley*, 854 F.3d 544, 550 (8th Cir. 2017) (Kelly, J., concurring) (concluding that, in the stay of execution context, the state's interest in an expedited execution timeline is outweighed by the inmate's "interest in ensuring that his execution is not carried out in violation of the [Constitution]"). Indeed, no one can claim an interest in executing a sentence in violation of Jones's constitutional rights. See *Wood v. Collier*, 836 F.3d 534, 542 (5th Cir. 2016) ("The finality of a death sentence and, with it, the inherent risk of uncertainty demand diligent effort by all.").

25. Finally, Jones has not unreasonably delayed asserting his rights. He was expeditious in filing this Motion and his Petition for Certiorari upon the denial of his Second Application by the TCCA, well within the 90-day filing deadline.

CONCLUSION

Jones prays that this Court stay the execution date of May 19, 2021 so that he may pursue the relief requested in the Petition for Writ of Certiorari filed today.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that on May 17, 2021, this motion was served on the following counsel by the method stated.


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