

No.. 22A74

In the Supreme Court of the United States

◆
JOE NATHAN JAMES,
PETITIONER-APPLICANT,

v.

TERRY RAYBON,
WARDEN, HOLMAN CORRECTIONAL FACILITY,
RESPONDENT.

RESPONSE IN OPPOSITION TO EMERGENCY APPLICATION FOR STAY OF EXECUTION

To the Honorable Clarence Thomas,
Associate Justice of the Supreme Court of the United States and
Circuit Justice for the Eleventh Circuit

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EXECUTION SCHEDULED THURSDAY, JULY 22, 7:00 P.M. EDT

PARTIES TO THE PROCEEDING

The parties to the proceedings below are as follows:

Applicant Joe Nathan James was the plaintiff in the Jefferson County Circuit Court and the appellant in the Alabama Court of Criminal Appeals.

Respondent Terry Raybon, in his official capacity as Warden of Holman Correctional Facility, was the defendant in the Jefferson County Circuit Court and the Appellee in the Alabama Court of Criminal Appeals.

TO THE HONORABLE CLARENCE THOMAS, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE ELEVENTH CIRCUIT:

Joe Nathan James is scheduled to be executed at 7:00 p.m. EDT today¹ for murdering Faith Hall during the course of a burglary in 1994. Since the setting of James' execution on June 7, 2022, James has filed a number of actions in various courts, filing both *pro se* and counseled petitions. The present application arises out of a successive postconviction petition brought pursuant to Alabama Rule of Criminal Procedure 32, which governs postconviction challenges. The originally *pro se* petition and its counseled successor were rooted in state law questions concerning Petitioner's indictment and the issuance of the death warrant in this matter. The state circuit court correctly recognized that Petitioner's claims were meritless and denied any relief. This Court should do likewise.

And it should do so swiftly so the execution may take place. Though Petitioner attempts to lay the responsibility for the last-minute nature of this petition at the feet of the Jefferson County Circuit Court, the responsibility is his own. Petitioner chose to unreasonably delay filing his successive state court petition until months after the State sought an execution warrant and ten days after the execution warrant was actually issued. After the successive petition was correctly denied yesterday at **1:56 p.m.**, Petitioner waited until **8:48 p.m.**, July 27, to seek a stay of his **7:00 p.m.** execution. Petitioner could have sought this Court's intervention after the Eleventh Circuit correctly denied relief on two of his federal actions on Tuesday, July 26, but he chose to wait and seek this Court's intervention in his state law actions instead. Perhaps it is because he knows that the warrant expires at midnight CDT, meaning

that if the Court waits too long to deny his application, he will have obtained an unwarranted reprieve of his sentence through pure gamesmanship. *Cf. Price v. Dunn*, 139 S. Ct. 1312 (2019) (lifting stay after warrant had expired). This Court should not let that happen.

The simplest ground for swiftly denying relief is delay. Petitioner unreasonably delayed bringing his successive postconviction challenge until his execution was barely a month away, giving the state court little time to weigh his claims. Even then, he made no attempts to seek expedited consideration of his claims in Jefferson County Circuit Court. He filed no motions for timely rulings, no emergency motions, and requested no expedited review in the petitions themselves – including the counseled amended petition filed just two weeks before his scheduled execution. Thus, the “emergency” behind James’s emergency application is one of his own creation – and is reason enough to deny his application.

Denial is also warranted because Petitioner has not shown that this Court is likely to grant certiorari to consider an appeal of his claims, which are heavily fact-bound and rooted in questions of state law, much less that he would be likely to prevail on those claims. At bottom, his claims are not federal in nature, but arise out of his own peculiar – and erroneous – interpretation of Alabama law and his erroneous and unsupported factual assertions. In rejecting Petitioner’s requests for postconviction relief, the circuit court correctly recognized that all of his claims were barred by independent and adequate state law procedural rules and were meritless.

* * *

This petition arises out of Petitioner's filing of a procedurally-barred and meritless Rule 32 petition in state court. Petitioner first incorrectly filed a *pro se* petition in the wrong county – Escambia County where he was confined rather than Jefferson County where he was convicted- then, after the Escambia County Court transferred the matter to Jefferson County, *ex mero motu*, Petitioner filed a counseled Amended Petition that adopted his original petition by reference. In both cases, Petitioner was unreasonably dilatory in his filings.

Petitioner's claims break down roughly into two categories: 1) the claim that his imprisonment before the issuance of the execution warrant was illegal, and 2) challenges to his indictment and the legal sufficiency of the evidence at trial. None of his claims are of a nature that could not have been raised and settled long ago by the state courts if James had not delayed so long in bringing them.

By waiting until his execution loomed barely a month away, Petitioner set this matter up for the last-minute urgency that he now relies upon to seek this Court's intervention. The state trial-level court properly rejected Petitioner's state law claims. And Petitioner has also sought a stay in the Alabama Supreme Court – a much more appropriate venue for his state law claims than this Court. And his dilatory litigation strategy should weigh heavily against his request. Petitioner executed Faith Hall on August 15, 1994 – nearly twenty-eight years ago. He has been on death row for decades. And he has waited until less than twenty-four hours before his execution to ask this Court for relief. It would be unjust to further delay the execution of James' lawful sentence.

PROCEDURAL HISTORY

In 1999, a Jefferson County jury found Joe Nathan James guilty of the capital offense of murdering Faith Hall during the course of a burglary, in violation of section 13A-5-40(a)(4) of the Code of Alabama. *James v. State*, 788 So. 2d 185, 188 (Ala. Crim. App. 2000). The jury unanimously recommended that he should be sentenced to death. *Id.* The Honorable Michael W. McCormick followed the jury's recommendation and sentenced him to death. *Id.*

James's conviction and death sentence were affirmed on direct appeal. *James*, 788 So. 2d at 198, *cert denied*, No. 1991959 (Ala. Dec. 15, 2000), *cert denied*, 532 U.S. 1040 (2001) (mem.).

James filed a Rule 32 petition for postconviction relief in the Jefferson County Circuit Court. After some twists and turns, the circuit court held an evidentiary hearing and denied his petition. *James v. State*, 61 So. 3d 357, 361 (Ala. Crim. App. 2010). The Alabama Court of Criminal Appeals affirmed. *Id.* at 384.¹

James next filed a petition for writ of habeas corpus in the Northern District of Alabama. The district court dismissed and denied his petition. *James v. Culliver*, No. CV-10-S-2929, 2014 WL 4926178 (N.D. Ala. Sept. 30, 2014). Following briefing and argument, the Eleventh Circuit affirmed. *James v. Warden*, 957 F.3d 1184 (11th Cir. 2020). This Court denied certiorari. *James v. Raybon*, 141 S. Ct. 1463 (2021) (mem.).

¹ Since then, James has filed no fewer than three successive Rule 32 petitions, all of which have been summarily dismissed.

James's conviction and sentence are final because he has completed his direct appeal, state postconviction review, and federal habeas review. Consequently, on March 17, 2022, the State moved the Alabama Supreme Court to set his execution date. On June 7, 2022, the court granted the State's motion, setting his execution date for July 28, 2022. The state postconviction action that is at issue here, along with multiple other contemporaneous actions, have all been filed since Appellant's execution date was set.

ARGUMENT

As an initial matter, Petitioner's stay application comes before this Court in an exceedingly unusual posture. Petitioner has unsuccessfully sought to stay his execution in federal court – but his petition doesn't arise out of that matter, or even refer to it. Instead, Petitioner is asking this Court to intervene in a pending state court matter. But Petitioner has not even filed any brief or argument in state court, much less exhausted his appeal. Nor has Petitioner filed a petition for writ of certiorari in this Court, or even identified any *potential* petition that he *might* file. Further, *none* of the “questions presented” in Petitioner's application concern any of the substantive grounds at issue in the successive, procedurally-barred, postconviction petition that was recently denied and which, purportedly, gave rise to Petitioner's stay application. Indeed, a review of Petitioner's argument reveals that his questions presented are entirely new grounds that are not properly before this Court and which certainly do not warrant delaying his execution.

A stay should be granted only when there are “substantial grounds upon which relief might be granted.” *Barefoot v. Estelle*, 463 U.S. 880, 895 (1993). There “must be a reasonable probability that four members of this Court would consider the underlying issue sufficiently meritorious for the grant of certiorari or the notation of probable jurisdiction,” and “there must be a significant possibility of reversal of the lower court’s decision.” *Id.* These conditions do not exist. The issues that Petitioner attempts to raise in his stay application are defaulted, fact-bound, meritless, and unworthy of review.

I. Petitioner Has Waited Too Late To Ask This Court To Stay His Execution To Review The Claims Raised In His Application.

This Court should deny Petitioner’s motion for stay of execution filed less than 24 hours before his scheduled execution. Petitioner has known since June 7, 2022, that his execution date was set for July 28, 2022. Even though Petitioner has known for more than a month that the Alabama Supreme Court had scheduled his execution, he waited until the night before his scheduled execution to file his motion for stay of his execution with this Court, a motion where he raises some claims never before considered by *any court anywhere*.

Petitioner lists five “questions presented” in his stay application:

1. Did the [circuit court] commit error in granting the petitioner’s request to proceed *in forma pauperis* when he is an incarcerated inmate on death row that costs him valuable time?
2. Did the delay in granting the *in forma pauperis* create a need to grant a stay of execution in order that your petitioner have time to exhaust his appeal of right on the denial of the substantive petition?
3. Can the State of Alabama execute your petitioner with a pending appeal?

4. Were your petitioner's due process rights violated when the state failed to give adequate notice of his right to elect [sic] method of execution?
5. Do the victim's surviving family members deserve to be heard?²

Of these five questions, only the first two have any relationship at all to the successive state petition that gives rise to Petitioner's motion. The remaining claims are raised here for the first time and after unreasonable delay.

Petitioner's conduct in this case is particularly egregious because of his refusal to raise any claims in the appropriate courts at the appropriate time. Petitioner's bare claims of error regarding the granting of *in forma pauperis* status are properly state law claims and, though baseless, they are not questions that would warrant this Court's review, even if they had been raised in a petition for certiorari review. Sup. Ct. R. 10. His questions regarding execution "with a pending appeal," notice regarding the nitrogen hypoxia election, and the victim's family were not raised in the successive postconviction petition below, and, indeed, have not been raised in *any* court. They are certainly not properly raised in this Court now. This Court should not allow Petitioner to manipulate the system to his advantage especially considering that no petition for writ of certiorari has been filed, there is no final decision of a state court to review, he does not present compelling reasons that would justify granting certiorari, and where the evidence of his guilt is overwhelming and undisputed.

This Court noted the following in *Nelson v. Campbell*, 541 U.S. 637, 649-650 (2004), concerning the equitable presumption against granting a stay of execution:

A stay is an equitable remedy, and "[e]quity must take into consideration the State's strong interest in proceeding with its judgment

² Motion for Stay of Execution, p. 2.

and ... attempt[s] at manipulation." *Ibid.* Thus, before granting a stay, a district court must consider not only the likelihood of success on the merits and the relative harms to the parties, but also the extent to which the inmate has delayed unnecessarily in bringing the claim. Given the State's significant interest in enforcing its criminal judgments, see *Blodgett*, 502 U.S., at 239, 112 S.Ct. 674; *McCleskey*, 499 U.S., at 491, 111 S.Ct. 1454, 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.

See also Gomez v. United States Dist. Court for N. Dist. of Cal, 503 U.S. 653, 654 (1992) (We will “consider the last-minute nature of an application to stay execution in deciding whether to grant equitable relief.”). “The state has a strong interest in assuring that constitutionally valid state court judgments are not set aside and can be carried out without undue delay.” *Ritter v. Smith*, 811 F.2d 1398, 1403 (11th Cir.), *cert. denied*, 483 U.S. 1010 (1987). Indeed, as the Eleventh Circuit has cogently observed, “[e]ach delay [in execution], for its span, is a commutation of a death sentence to one of imprisonment.” *Thompson v. Wainwright*, 714 F. 2d 1495, 1506 (11th Cir. 1983), *cert. denied*, 466 U.S. 962 (1984). Petitioner’s failure to raise his claims until the very last minute can only reflect an “[e]ffort on the part of [Petitioner] to delay [his] filings until the last minute with a view to obtaining a stay because the district court will lack time to give them the necessary consideration before the scheduled execution.” *Sawyer v. Whitley*, 505 U.S. 333, 341 n. 7 (1992). *See also Tucker (Williams) v. Kemp*, 819 F. 2d 978, 981 (11th Cir. 1987), *cert. denied*, 481 U.S. 1073 (1987) (by waiting until the eve of his execution to raise this claim and to proffer the evidence to support it, petitioner has abused the writ); *Bell v. Lynaugh*, 858 F. 2d 978, 985-86 (5th Cir. 1988) (Jones, J. concurring), *cert. denied*, 492 U.S. 925 (1989)

(“his motive in late-filing must have been to play ‘chicken’ with the state and federal courts on the eve of execution”). “A court may resolve against such a petitioner doubts and uncertainties as to the sufficiency of his submission.” *Whitley*, 505 U.S. at 341 n. 7. As the Fifth Circuit noted in a similar case, “[n]o explanation for these delays is offered, and we can only assume that they represent a fixed resolve to call haste and confusion into service in [the petitioner’s] cause along with analysis and argument.” *Franklin v. Lynaugh*, 860 F. 2d 165, 166 (5th Cir. 1988); *Hutchins v. Woodward*, 730 F. 2d 953, 954 (4th Cir. 1984) (“As is all too customary, at the last, or nearly the last moment, questions which counsel for the person condemned automatically classify as crucial are raised and advanced as grounds for stay of execution to permit reasoned and unhurried consideration”).

Petitioner should not be rewarded for his transparent attempt to game the system. He offers no legitimate reason for waiting until the last minute to raise his claims. His request for a stay of execution should therefore be denied.

II. Petitioner’s Claims Are Not Meritorious And Are Not Matters Worthy of This Court’s Certiorari Jurisdiction.

Again, as an initial matter, the procedural posture of this case means that there is no final state court decision for this Court to review. This Court has stated that it will only grant certiorari review where there are “compelling reasons” to do so. *Supreme Court Rule 10*. Rule 10 states two compelling reasons to grant certiorari review from a state court decision. First, a state court of last resort that decides an important federal question in a way that conflicts with the decision of another state court of last resort or with a decision of a federal court of appeals is a compelling

reason. *Supreme Court Rule 10(b)*. Second, a state court decision on an important federal question that conflicts with a decision of this Court is another compelling reason. *Supreme Court Rule 10(c)*. In this case, neither of these compelling reasons is present because the Alabama Supreme Court has not yet addressed Petitioner's allegations on the merits. As a result, this Court should refuse to grant a stay of execution. To do otherwise would incentivize future litigants to engage in the same sort of gamesmanship that Petitioner has.

Nor do the issues Petitioner relies on even present the prospect of a meritorious certiorari petition. First, in questions one and two, Petitioner seems to argue that the Jefferson County Circuit Court erroneously "delayed" in granting him *in forma pauperis* status. James offers very little in the way of support of this claim, much less anything that would warrant this Court's review pursuant to Rule 10.³ There are no constitutional grounds stated, and the only potential question is one of pure state law: "how long may a circuit court wait to rule on an *in forma pauperis* motion?" James offers no answer. Nor, indeed, does he acknowledge that he caused the initial delay. First by filing his petition in an untimely manner in the wrong court, and then by filing an outdated financial statement. But these fact-bound issues of state procedure offer no compelling reasons to grant certiorari review, much less to show that a stay would be warranted.

Second, James asks whether the State of Alabama may execute him "with a pending appeal." As a practical matter, answering this question in the negative would

³ Motion for Stay of Execution, p. 2.

be untenable. Doing so would mean that inmates could infinitely delay their executions simply by filing successive state or federal petitions and appealing each time they are properly denied relief. But more to the point, Petitioner offers no compelling grounds to grant him relief. This is not a case in which he has lacked the opportunity to litigate his appeals. Indeed, as discussed above, Petitioner's conviction and sentence have been fully litigated in state and federal courts.

Third, in question four, Petitioner appears to argue, for the first time, that he was not given "adequate notice" of his right to elect a method of execution. As an initial matter, it is worth noting that James raised a related claim in his federal court filings, arguing that the state denied him equal protection in relation to by failing to give "timely notice" of his ability to elect a method of execution. James did raise a related equal protection argument in recent federal litigation and, in denying relief, the Eleventh Circuit held:

The election form that was distributed to "every death-row inmate" was created by the federal public defender's office. The form was distributed to both death-row inmates represented by the federal public defender's office and to inmates not represented by the office, and inmates not represented by the office were among those who timely elected to be executed by nitrogen hypoxia. *See Price*, 920 F.3d at 1324 n.4 ("The [s]tate admits ... that it did not create the election form. Rather, it claims the [f]ederal [p]ublic [d]efender's [o]ffice created the form and gave a copy of it to the warden of Holman. But inmates not represented by the [f]ederal [p]ublic [d]efender's [o]ffice were among those who timely completed the form."). James concedes he was given the election form, and, as the district court found, he "did not make his election during the required thirty-day timeframe."

James v. Att'y Gen., No. 22-12345, 2022 WL 2952492, at *5 (11th Cir. July 26, 2022).

It is clear then that James *had* notice but simply chose not to elect nitrogen hypoxia.

But even if there were any merit to James' "inadequate notice" claim, this Court is not the appropriate place to raise it for the first time.

Finally, Petitioner asks whether his victim's family members "deserved to be heard." Certainly, they do, but this Court is not the proper forum. Indeed, the victim's family *has been heard*. Through a state representative, the victim's family has submitted a clemency petition to the proper authority – the Alabama Governor. While their feelings are worthy of consideration and respect, they do not constitute grounds for review or a stay by this Court.

III. Petitioner's State Petition Was Properly Denied.

Thus, the appropriate vehicle for this Court's consideration is not the "questions presented" laid out in the Motion for a Stay of Execution. The closest thing to a proper question before this Court is whether James is entitled to relief on his successive, time-barred post-conviction petition pursuant to a state rule, Rule 32 of the Alabama Rules of Criminal Procedure. As argued above, that question is not reviewable under Rule 10 because there is no final decision from a state court of last resort. Moreover, this Court's review of state court decisions is limited to issues involving the federal Constitution. *E.g., Chandler v. Florida*, 449 U.S. 560, 570 (1981) ("This Court has no supervisory jurisdiction over state courts, and, in reviewing a state court's judgment, we are confined to evaluating it in relation to the Federal Constitution."). In this post-conviction proceedings, the circuit court agreed with the State's arguments concerning James's successive, time-barred post-conviction petition. There are adequate and independent state grounds for this decision and

James offers no argument at all regarding the propriety of the state court decision denying relief. Only review of the state court's application of state procedural rules and questions of state law⁴ are implicated; there being no legitimate federal constitutional question, James's motion for stay should be denied.

IV. Petitioner's Hypothetical RLUIPA Action Does Not Warrant a Stay.

Finally, in his Amended Prayer for Relief, filed through counsel less than seven hours before his scheduled execution, Petitioner indicates his intent to file third-party actions *on behalf of the victim's family* pursuant to the Alabama Religious Freedom Act and the Religious Land Use and Institutionalized Persons Act (RLUIPA) based on the Alabama Governor's denial of a clemency petition from the family. (Amended Prayer for Relief, p. 1.) As an initial matter, the exceedingly thinly-reasoned and late-breaking nature of this argument suggests that its real purpose is to stave off James's lawfully-imposed execution rather than to allow him to vindicate any actual right (which even he admits would be the family's, not his own).

Moreover, the purpose of RLUIPA was to prevent the imposition of "a substantial burden on the *religious exercise of a person* residing in or confined to an institution[.]" 42 U.S.C.A. § 2000cc-1. The Alabama Religious Freedom Act shares a similar purpose. But Petitioner offers no way in which *his* exercise of religion has been burdened or limited – his argument appears to be based on the denial of a clemency request by others. And in any case, James proposes to challenge the denial

⁴ James's claims below center largely on fact-bound and plainly erroneous argument regarding his indictment and the propriety of his confinement prior to the issuance of the execution warrant in this case. These issues are both plainly meritless under state law and fail to implicate any legitimate federal constitutional questions.

of clemency by the Governor, but, as this Court has observed, “[w]hile traditionally available to capital defendants as a final and alternative avenue of relief, clemency has not traditionally “been the business of courts.” *Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 272, 284 (1998).

Similarly, in a *pro se* amendment to his petition, James explicitly argues that his execution would violate his First Amendment rights and those of his victim’s family because the Koran requires the wishes of the victim’s family to be taken into account. These claims have never been raised in any court prior to this amendment which comes mere hours before James’s execution. First, to the extent that Petitioner raises claims on behalf of his victim’s family, he lacks standing to do so. Moreover, as argued above, the Alabama Governor considered the request for clemency by Ms. Hall’s family. Thus, their First Amendment rights to petition the government and express any religious beliefs they may have have not been infringed. Second, to the extent that James argues that his own First Amendment rights would be violated, he fails to identify any infringement beyond his execution itself and fails to cite any authority for a First Amendment right “not to be executed.”⁵ As with the RLUIPA argument above, this is, at bottom, an attempt to litigate the issue of discretionary clemency which is not the “business of courts.” *Ohio Adult Parole Auth.*, 523 U.S. at 284.

⁵ Moreover, the practical implications of recognizing any such right are obvious. Any condemned person – indeed any *incarcerated* person – could simply claim that the First Amendment requires that he be freed because it is his religious belief that he should be.

Petitioner's late-breaking amendments are nothing more than a naked attempt to delay his lawful execution. They do not offer any meritorious grounds for granting the requested stay and this Court should not grant relief.

V. The Remaining Equitable Factors Favor Denying A Stay.

Finally, the Court should deny Petitioner's application because a stay would harm Respondents and is adverse to the public interest. This Court has repeatedly held that "[b]oth the State and the victims of crime have an important interest in the timely enforcement of a sentence." *Hill v. McDonough*, 547 U.S. 573, 584 (2006). For this reason, "equity must be sensitive to the State's strong interest in enforcing its criminal judgments without undue interference from the federal courts." *Id.*

CONCLUSION

Based on the preceding legal authority and argument, this Court should deny Petitioner's motion for a stay of execution.

Dated: July 28, 2022

Respectfully submitted,

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