Capital Case No. 24A1037

In The
Supreme Court of the United States

JEFFREY GLENN HUTCHINSON,
Petitioner,

v.

RICKY D. DIXON, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE FLORIDA SUPREME COURT

RESPONSE TO APPLICATION FOR STAY OF EXECUTION EXECUTION SCHEDULED FOR MAY 1, 2025, AT 6:00 P.M.

RESPONSE TO APPLICATION FOR A STAY OF THE EXECUTION

On April 27, 2025, Hutchinson, represented by state postconviction counsel, Capital Collateral Regional Counsel - North (CCRC-N), filed a petition for a writ of certiorari in this Court raising three issues in this active warrant case. Hutchinson also filed an application for a stay of the execution for this Court to decide his pending petition. This Court, however, should simply deny the petition and deny the stay.

Stays of executions

Stays of executions are not granted as "a matter of course." *Hill v. McDonough*, 547 U.S. 573, 583-84 (2006). Rather, a stay is "an equitable remedy" and "equity must be sensitive to the State's strong interest in enforcing its criminal judgments without undue interference from the federal courts." *Id.* at 584. 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." *Nelson v. Campbell*, 541 U.S. 637, 650 (2004). Equity must also consider "an inmate's attempt at manipulation." *Gomez v. U.S. Dist. Ct. for N. Dist. of Cal.*, 503 U.S. 653, 654 (1992). "Both the State and the victims of crime have an important interest in the timely enforcement of a sentence." *Calderon v. Thompson*, 523 U.S. 538, 556 (1998). This Court has highlighted the State's and the victims' interests in the timely enforcement of the death sentence. *Bucklew v. Precythe*, 587 U.S. 119, 149-151 (2019). The people of Florida, as well as surviving victims and their families, "deserve better" than the "excessive" delays that now typically occur in capital cases. *Id.* at 149. The Court has stated that courts should "police carefully" against last minute claims being used "as tools to interpose unjustified delay" in executions. *Id.* at 150. This Court has also repeatedly stated that last minute stays of execution should be the "extreme exception, not the norm." *Barr v. Lee*, 591 U.S. 979, 981 (2020) (vacating a lower court's grant of a stay of a federal execution quoting *Bucklew*, 587 U.S. at 151).

Three factors for a stay

To be granted a stay of execution in this Court, Hutchinson must establish three factors: (1) a reasonable probability that the Court would vote to grant certiorari; (2) a significant possibility of reversal if review was granted; and (3) a likelihood of irreparable injury to the applicant in the absence of a stay. *Barefoot v. Estelle*, 463 U.S. 880, 895 (1983). He must establish all three factors.

Probability of this Court granting certiorari

As to the first factor, there is little chance that four justices of this Court would vote to grant certiorari review on the three issues raised in the petition. As explained

in detail in the accompanying brief in opposition, the issues raised in the petition are matters of state law. Claims of newly discovered evidence raised pursuant to *Jones v. State*, 709 So. 2d 512 (Fla. 1998), are state law claims with no federal constitutional equivalent. This Court does not review matters of state law. *Michigan v. Long*, 463 U.S. 1032, 1041 (1983) (explaining that if "the state court decision indicates clearly and expressly that it is alternatively based on bona fide separate, adequate, and independent grounds, we, of course, will not undertake to review the decision."). Indeed, this Court views the matter as jurisdictional. *Glossip v. Oklahoma*, 145 S. Ct 612, 624 (Feb. 25, 2025) ("In the context of direct review of a state court judgment, the independent and adequate state ground doctrine is jurisdictional.").

Regarding the one federal claim involving the Eighth Amendment, the Florida Supreme Court found the claim was "not properly presented below" because it was not separately pled as "claim 3" as required by the state rules of court. *Hutchinson v. State*, 2025 WL 1155717, at *3 (Fla. Apr. 21, 2025). State pleading rules are also a matter of state law, which is an adequate and independent ground to deny review.

Nor is there any conflict with this Court on the merits. There is no Eighth Amendment right to present new mitigation, discovered years after the death sentences were final. There is a low probability of this Court granting certiorari.

Hutchinson fails the first factor which alone is sufficient reason to deny his request for a stay because he is required to establish all three factors.

Probability of this Court granting relief on the merits

As to the second factor, there is little possibility of Hutchinson obtaining a new penalty phase based on newly discovered evidence of mitigation, even if this Court granted review, much less a "significant" possibility. If this Court were to grant review, it would most likely hold the Eighth Amendment right to present mitigation,

announced in *Lockett v. Ohio*, 438 U.S. 586 (1978) (plurality opinion), and *Eddings v. Oklahoma*, 455 U.S. 104 (1982), is limited to the original penalty phase and does not extend to new mitigation discovered for the first time at the postconviction stage. This Court has shown little inclination to recognize claims of "innocence of the death penalty" over the years.

Alternatively, even if this Court were to recognize a claim of "innocence of the penalty" under the Eighth Amendment, it would be limited to new evidence that negates all of the aggravation, rendering the defendant ineligible for the death penalty. New mitigation would not even be considered. *Irick v. Bell*, 2010 WL 4238768, at *5 (E.D. Tenn. Oct. 21, 2010) (stating that actual innocence of the death penalty "must focus on those elements that render a defendant eligible for the death penalty, and not on additional mitigating evidence" citing *Sawyer v. Whitley*, 505 U.S. 333, 347 (1992)). But the claim Hutchinson is raising concerns only new mitigation (most of which is not even new).

Hutchinson does not have a "significant" possibility of obtaining a new penalty phase, if this Court were to grant review. Hutchinson also fails the second factor.

Irreparable injury

As to the third factor of irreparable injury, none is identified. While the execution will result in Hutchinson's death, that is the inherent nature of a death sentence. The factors for granting a stay are taken from the standard for granting a stay for normal civil litigation, which is not a natural fit in capital cases. *Barefoot*, 463

U.S. at 895-96 (citing *Times-Picayune Pub. Corp. v. Schulingkamp*, 419 U.S. 1301, 1305 (1974) (Powell, J., in chambers)). In the capital context, more should be required to establish irreparable injury than the execution itself. Otherwise, this factor would automatically be satisfied in every capital case. Hutchinson has

identified no irreparable harm that is not a direct consequence of his valid, constitutional, and long- final death sentences for the mass murder of three young children.

Moreover, this Court has stated in the capital context that "the relative harms to the parties" must still be considered, including "the State's significant interest in enforcing its criminal judgments." *Nelson*, 541 U.S. at 649-50 (emphasis added). Without finality, "the criminal law is deprived of much of its deterrent effect." *Calderon v. Thompson*, 523 U.S. 538, 555-56 (1998). And finality in a capital case is the execution. These murders occurred in 1998 and his three death sentences have been final since 2004. Hutchinson fails the third factor as well.

Accordingly, this Court should deny the motion to stay.

Respectfully submitted,

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