No. 25A280

IN THE
SUPREME COURT OF THE UNITED STATES

DAVID JOSEPH PITTMAN,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

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

RESPONSE TO APPLICATION FOR STAY OF EXECUTION
EXECUTION SCHEDULED FOR September 17, 2025, at 6:00 p.m.

On September 11, 2025, Pittman, represented by state postconviction counsel Julissa R. Fontán and the Capital Collateral Regional Counsel ("CCRC"), filed in this Court, a petition for writ of certiorari seeking review of a decision from the Florida Supreme Court in this active warrant case. The petition raises two issues: whether the Eighth Amendment was violated by the Florida Supreme Court's decision in *Phillips v. State*, 299 So. 3d 1013 (Fla. 2020), which held *Hall v. Florida*, 572 U.S. 701 (2014), should not apply retroactively; and whether the *Phillips* decision violates the Ex Post Facto Clause of the United States Constitution. Pittman also filed an application for a stay of execution based on the petition. This Court should deny the petition and then deny the stay.

Stays of Execution

Stays of executions are not granted as "a matter of course." *Hill v. McDonough*, 547 U.S. 573, 583-84 (2006). Rather, a stay of execution 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 the victims' 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) (quoting *Bucklew*, 587 U.S. at 151, and vacating a lower court's grant of a stay of a federal execution).

To be granted a stay of execution in this Court, Pittman 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 Review

As to the first factor, there is little chance that four justices of this Court would vote to grant certiorari review on the issues raised in Pittman's petition. First, Florida's high court declined to revisit its *Phillips* holding. Instead, it found Pittman's intellectual disability claim procedurally barred under Florida law. *Pittman v. State*, No. SC2025-1320, 2025 WL 2609439, at *4 (Fla. Sept. 10, 2025). The procedural bar applied in state court below is reason enough to deny review. This Court does not grant review of issues that are matters of state law. *Foster v. Chatman*, 578 U.S. 488, 497 (2016); *Michigan v. Long*, 463 U.S. 1032, 1041-42 (1983).

Second, Pittman's instant ex post facto argument was never raised, briefed, or argued in state court. Because he did not present the same federal question in state court, this Court has "no power to consider it." *Street v. New York*, 394 U.S. 576, 581-82 (1969); *see also Hill v. California,* 401 U.S. 797, 805 (1971) (finding an issue was not properly before this Court when it was never raised, briefed, or argued in the state appellate court).

Third, a favorable ruling would not change the outcome in state court. Pittman was not intellectually disabled when he murdered the victims and went to trial, thus,

he cannot prevail in state court even if *Hall* is retroactive, rendering the question presented not case-dispositive and not meriting certiorari. *Cf. Rice v. Sioux City Mem'l Park Cemetery, Inc.*, 349 U.S. 70, 74 (1955) (certiorari should not be granted when the question presented, though "intellectually interesting," is merely "academic").

Finally, Pittman seeks to have this Court declare that intellectual disability claims can be raised at any time and cannot be forfeited, or waived, or procedurally barred. The Court has shown no inclination to declare that constitutional rights cannot be limited by reasonable restrictions. Such a ruling would positively invite more dilatory tactics in capital cases when the majority of this Court condemns such tactics.

For these reasons, the petition is unlikely to garner the necessary votes. Pittman has not established a reasonable probability that the petition will be granted. Pittman does not meet the first factor for being granted a stay.

Significant Possibility of Reversal

As to the second factor, there is not a significant possibility of reversal on the issues raised by Pittman. If this Court granted the petition, it is unlikely to hold that intellectual disability claims cannot be forfeited by being raised in a dilatory fashion. Both the majority and the dissent in *Bucklew* agreed that the long delays that now typically occur in capital cases are "excessive." 587 U.S. at 149, 168.

To do so, the Court would have to distinguish or overrule its long-standing precedent regarding forfeiture of claims. *Peretz v. United States*, 501 U.S. 923, 936-37 (1991) (observing that the "most basic rights of criminal defendants are similarly

subject to waiver" citing cases); *Yakus v. United States*, 321 U.S. 414, 444 (1944) ("No procedural principle is more familiar to this Court than that a constitutional right may be forfeited in criminal as well as civil cases by the failure to make timely assertion of the right."); *Block v. N. Dakota ex rel. Bd. of Univ. & Sch. Lands*, 461 U.S. 273, 292 (1983) (stating that a "constitutional claim can become time-barred just as any other claim can"). This Court routinely enforces time bars and procedural bars in capital habeas cases, including in those raising "fundamental" constitutional claims. *Lawrence v. Florida*, 549 U.S. 327, 337 (2007) (affirming the dismissal of a capital habeas petition as untimely).

Additionally, Pittman's freestanding Eighth Amendment analysis finding *Hall* applies retroactively fails. *Hall* neither promulgated a substantive rule nor a "watershed" rule of criminal procedure. Instead, it announced a new procedural rule restricting a state's previously recognized power to set procedures governing the execution of the intellectually disable. Rather than broadening the class of individuals who could not be executed under *Atkins v. Virginia*, 536 U.S. 304 (2002), *Hall* simply prevents the States from using a particular procedure, which the Court deemed inappropriate.

This Court has never suggested that a capital defendant can circumvent its generally applicable retroactivity framework by arguing that denying retroactive application will independently offend the Eighth Amendment. In fact, it has said the opposite. *See Penry v. Lynaugh*, 492 U.S. 302, 314 (1989) ("In our view, the finality concerns underlying Justice Harlan's approach to retroactivity are applicable in the

capital sentencing context, as are the two exceptions to his general rule of nonretroactivity."). Any consequential differing treatment experienced by defendants inheres in retroactivity jurisprudence—defendants whose convictions became final before a new rule took effect are not entitled to invoke it, while those whose convictions became final after are. And nothing in the Eighth Amendment says that a state court is powerless to fix its mistakes simply because the death penalty is involved. Were it otherwise, no state court could recede from precedent affecting the death penalty; some defendants, after all, would have received the benefit of the old precedent whereas future defendants would not.

Further, the Florida Supreme Court's decision does not violate the Ex Post Facto Clause, because it is inapplicable to changes in decisional law; it applies only to legislative changes. *See Rogers v. Tennessee*, 532 U.S. 451, 456 (2001) (explaining that the Ex Post Facto Clause "is a limitation upon the powers of the Legislature, and does not of its own force apply to the Judicial Branch of government."). But even if Pittman has framed his ex post facto challenge as a due process argument, it falls short. The Florida Supreme Court's decision in *Phillips* did not deprive Pittman of fair warning that his prior act of killing the victims constituted first-degree murder. Nor did it deprive him of fair warning that the offenses subjected him to capital punishment.

Finally, the application of procedural bars to intellectual disability claims is consistent with the underlying rationale of *Atkins*. The onset of intellectual disability under *Atkins* "must occur before age 18 years." 536 U.S. at 308 n.3. Thus, if a

defendant has an intellectual disability when he is scheduled to be executed, he had an intellectual disability throughout the appellate process. Also, unlike this Court's competency-to-be-executed analysis under *Ford v. Wainwright*, 477 U.S. 399 (1986), and *Panetti v. Quarterman*, 551 U.S. 930 (2007), *Atkins* focused exclusively on the defendant's culpability or reliability at the time the crime was committed. 536 U.S. at 319-21.

Pittman's underlying intellectual disability claim is meritless under *Atkins*. He was not intellectually disabled when he murdered the three victims in 1990 or when he went to trial in 1991. A defense-retained clinical psychologist specializing in clinical neuropsychology and child psychology testified at trial that Pittman had an IQ of 95. This score is consistent with the evidence of premeditation and his attempts to avoid apprehension. Further, Pittman testified at trial and maintained a detailed alibi defense. Ultimately, there was no error at all in the proceedings below, let alone one that warrants certiorari review.

Irreparable Injury

As to the third factor of irreparable injury, none is identified. While the execution will result in Pittman'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 as applied to 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)). Finality in a capital case is the execution, so some additional showing should be required in a capital case to satisfy

this factor. Pittman has identified no irreparable harm that is not a direct consequence of the valid, constitutional, and long-final death sentences that were imposed in 1991 for his murders of Clarence, Barbara, and Bonnie Knowles.

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). Again, finality in a capital case is the execution. The murders for which Pittman was sentenced to death occurred in 1990, and his death sentences have been final since 1995. Pittman fails this factor as well. Accordingly, this Court should deny the motion to stay.

Pittman fails to meet any of the three factors for being granted a stay of execution. Therefore, the application for a stay of execution should be denied.

Respectfully submitted,
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