

Capital Case No. 25A960

IN THE
SUPREME COURT OF THE UNITED STATES

Billy Leon Kearse,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

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

**RESPONSE TO APPLICATION FOR STAY OF EXECUTION
EXECUTION SCHEDULED FOR MARCH 3, 2026, AT 6:00 P.M.**

Billy Leon Kearse, a Florida prisoner under an active death warrant with an execution scheduled for March 3, 2026, asks this Court to stay his execution for the brutal murder of a police officer he committed in 1991 while it considers whether to grant certiorari. However, the questions Kearse presents do not warrant a stay under *Barefoot v. Estelle*, 463 U.S. 880, 895 (1983). As thoroughly explained in the accompanying Brief in Opposition to certiorari, Kearse’s questions do not merit this Court’s review. Therefore, this Court should deny the stay.

A stay of execution is not granted as a “matter of course.” It is an equitable remedy, and “equity must remain sensitive to the State’s strong interest in enforcing its criminal judgments without undue interference from the federal courts.” *Hill v.*

McDonough, 547 U.S. 573, 583–84 (2006). To obtain a stay, Kearsse must establish a reasonable probability that four Justices would vote to grant certiorari, a significant possibility of reversal, and a likelihood of irreparable harm. *Barefoot*, 463 U.S. at 895. This Court has further emphasized that last-minute litigation and dilatory claims weigh heavily against equitable relief. *Gomez v. U.S. Dist. Ct. for N. Dist. of Cal.*, 503 U.S. 653, 654 (1992). Kearsse cannot satisfy these requirements.

Kearsse’s claims involve something that was present during his re-sentencing trial and whether he is intellectually disabled. Both claims could and should have been brought earlier either in the direct appeal or in one of his many postconviction motions. The Florida Supreme Court found both claims untimely and procedurally barred, forestalling any possible relief. That court denied relief on independent state grounds and this Court does not have jurisdiction to review that determination.

Kearsse cannot demonstrate a significant possibility of reversal. The Florida Supreme Court rejected his claims on valid state procedural bars. *Kearsse v. State*, No. SC2026-0250 & SC2026-0251, 2026 WL 523132, at *2 (Fla. 2026). Given that the Florida Supreme Court found both claims untimely and procedurally barred, Kearsse cannot get a reversal of his death sentence because of those independent state law bars.

The timing of Kearsse’s claims independently forecloses equitable relief. He raised the issue of the presence of law enforcement possibly affecting the jury, something discoverable since 1996, only after the Governor signed his death warrant. *Rogers v. State*, 409 So. 3d 1257, 1263 (Fla. 2025) (“[I]n an active [death] warrant

case, a postconviction claim that could have been raised in a prior proceeding is procedurally barred.”). Similarly, Kearse failed to raise his *Atkins* claim until after the warrant was signed rather than at any time during the many postconviction claims filed since 2001. *Jones v. State*, 419 So. 3d 619 (Fla. 2025), *cert. denied*, 146 S. Ct. 79 (2025) (denial of certiorari of a procedurally barred intellectual disability claim). This Court has explicitly recognized Florida’s time and procedural bars as adequate state-law grounds which deprive this Court of jurisdiction. *Walker v. Martin*, 562 U.S. 307, 315 (2011) (recognizing that time bars are an independent and adequate state-law ground precluding review).

Equity does not reward last-minute litigation designed to delay the imposition of lawful sentences. *See Nelson v. Campbell*, 541 U.S. 637, 650 (2004) (holding that 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.”). The dilatory posture of Kearse’s claims weighs heavily against a stay.

Kearse cannot demonstrate a reasonable probability that four Justices would grant certiorari. His claims rest on disputed factual premises regarding his diligence in pursuing his claims as well as any underlying substance of the claims, making this case a poor vehicle for review. This Court rarely grants certiorari to resolve fact-bound disputes. *See Sup. Ct. R. 10; United States v. Johnston*, 268 U.S. 220, 227 (1925) (“[This Court] do[es] not grant a certiorari to review evidence and discuss specific facts.”); *see also Cash v. Maxwell*, 565 U.S. 1138, 132 S. Ct. 611, 613 (2012)

(Sotomayor, J., respecting the denial of certiorari) (stating that mere disagreement with a court's "highly factbound conclusion is" an "insufficient basis for granting certiorari"). Additionally, these issues are rooted firmly in state law and do not implicate federal constitutional issues. Kearse has very little chance of success on the merits of his petition.

Finally, Kearse cannot establish irreparable harm. The death penalty naturally results in the defendant's death. Kearse does not identify any other irreparable injury. 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. Finality in a capital case is the execution, so some additional showing should be required in a capital case to satisfy this factor. Kearse has identified no irreparable harm that is not a direct consequence of his valid, constitutional, and long-final death sentence for the murder of a police officer during the performance of his duties.

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 v. Campbell*, 541 U.S. 637, 649-50 (2004). 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. This murder occurred in 1991 and Kearse's death sentence has been final since 2001. Kearse fails the third factor as well. Accordingly, this Court should deny the motion to stay.

A stay of execution is an extraordinary equitable remedy. Kearse's claims, barred under independent state law grounds, dilatory litigation, and failure to meet the *Barefoot* factors, foreclose relief. Accordingly, this Court should deny the application for stay.

Respectfully submitted,

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