

**In the
Supreme Court of the United States**

CURTIS WINDOM, *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 AUGUST 28, 2025, AT 6:00 P.M.**

On August 22, 2025, Windom 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 raised two issues: whether the Eight Amendment’s concept of evolving standards of decency should be extended to the Sixth Amendment and whether Windom was denied due process due to the 30-day warrant period. This Court, however, should simply 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, Windom 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.

1. 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 Windom's petition. Windom seeks review of the Florida Supreme Court's decision finding both his claims untimely under Florida's statute for postconviction relief and meritless. In addition, the court also found that Windom's first claim was procedurally barred, as well. The decision does not contain any legal error, let alone present any federal law question that would warrant review by this Court. This Court's Rule 10 states that certiorari review will be granted "only for compelling reasons," which include the existence of conflicting decisions on important questions of federal law among federal courts of appeals or state courts of last resort; a conflict between the lower court's decision and the relevant decisions of this Court; or an important question of federal law that has not been but should be settled by this Court. Sup. Ct. R. 10. No such situation exists here. Furthermore, even if the merits of Windom's arguments were before this Court, this case presents an exceptionally poor vehicle to address the issue. Windom's claims were found to be untimely by the Florida Supreme Court, and his first claim was found procedurally barred as well, because it merely reiterated earlier claims related to the sufficiency of his legal representation at trial. These claims were rejected by every court that heard them, including the Eleventh Circuit, the decision of which, at the time, this Court denied further review. There is little probability that the Court would vote to grant review under these circumstances. Windom fails the first factor, which is alone sufficient to deny the motion for a stay.

2. *Significant Possibility of Reversal*

As to the second factor, there is not a significant possibility of a reversal of the issue raised by Windom. Again, the decision Windom asks this Court to review is a decision by the Florida Supreme Court applying Florida procedural rules that control the filing of such motions with regard to such matters as the timing of the motion's filing; prohibitions against refiling of claims previously filed, including claims that are essentially the same as a previous claim filed but employ a different argument; and claims that could have previously been filed but were not. And even if this Court could reach the underlying issue Windom raises, it is highly unlikely that the Court would apply the Eighth Amendment principle of evolving standards of decency to the Sixth Amendment when no court in the United States has agreed to do so (and additionally, to apply it retroactively), or find that the 30 plus years Windom had to litigate any number of claims in postconviction should somehow be excluded in considering the time he has had available to raise claims to vacate his judgment and sentence.

Though Windom's stay application and certiorari petition contend his trial counsel was unqualified to handle a capital case, the fact is that his ineffective assistance claim was denied by both state courts and the federal district and appellate courts, and that this Court held in *Strickland*¹ that courts should "judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed *as of the time of counsel's conduct*." *Id.* at 690 (emphasis added). The facts of

¹ *Strickland v. Washington*, 466 U.S. 668 (1984).

Windom's case are accurately set forth in the numerous decisions of the Florida Supreme Court cited in the Secretary's Brief in Opposition, including its most recent decision in *Windom v. State*, No. SC2025-1182, 2025 WL 2414205. Ultimately, there was no error at all in the proceedings below, let alone one that warrants certiorari review.

3. Irreparable Injury

The execution that will result in Windom's death 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. Windom has identified no irreparable harm that is not a direct consequence of the valid, constitutional, and long-final death sentence that was imposed for his murders of Johnnie Lee, Valerie Davis, and Mary Lubin.

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 *execution*. The murders for which Windom was sentenced to death occurred in 1992, and his death sentence has been final since 2010. Windom fails this factor as well.

Accordingly, this Court should deny the motion to stay.

Windom 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.

Accordingly, this Court should deny the motion to stay.

Respectfully submitted,

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