Capital Case No. 25A406

In the

Supreme Court of the United States

SAMUEL L. SMITHERS, *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 OCTOBER 14, 2025, AT 6:00 P.M.

On October 8, 2025, Smithers 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 one issue: whether the Eight Amendment categorically exempts those over the age of sixty-five years old from execution. This Court, however, should simply deny both the petition and 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 "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, Smithers 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

There is little chance that four justices of this Court would vote to grant certiorari review on the issues raised in Smithers' petition. Smithers seeks review of the Florida Supreme Court's decision that did not address the merits of his claim, finding instead that : (1) Smithers' claim was untimely and procedurally barred under the state rules of criminal procedure; and (2) Article 1, Section 17 of the Florida Constitution, "Excessive punishment," contains a clause which requires all protections against cruel and unusual punishment be construed "in conformity with decisions of the United States Supreme Court" interpreting the Eighth Amendment to the United States Constitution ("conformity clause"). Art. I, § 17, Fla. Const. Smithers does not argue that either of these grounds contained any justiciable legal error, and he wrongly asserts there exists a question of federal law 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. Despite Smithers' assertion that his petition contains an important question of federal law, that is not the case here.

Even if the merits of Smithers' arguments were before this Court, this case presents an exceptionally poor vehicle to address the issue. Smithers points to no

court, state or federal, that has adopted his application of the Eighth Amendment. Indeed, the only opinion from a federal court of appeals that squarely addressed this claim wholly rejected Smithers' argument. *See Allen v. Ornoski*, 435 F.3d 946, 954-61 (9th Cir. 2006) (denying a certificate of appealability because "the claim that the Eighth Amendment forbids the execution of the elderly and infirm finds no support in our existing law, that of our sister circuits, or of the Supreme Court," and denying a stay because the defendant failed to demonstrate the presence of substantial grounds upon which relief might be granted). Thus, Smithers' application fails the first factor, which alone is sufficient to deny the motion for a stay.

2. Significant Possibility of Reversal

There is also not a significant possibility of a reversal of the claim raised by Smithers. Smithers asks this Court to review a Florida Supreme Court decision interpreting Florida's constitution and procedural rules that limit the timing of the postconviction motion's filing, prohibit claims that could have previously been filed, and require state courts to conform their application of a state constitutional provision to this Court's interpretation of the Eighth Amendment. Even if this Court could reach the underlying issue Smithers raises, it is highly unlikely that the Court would find that the Eight Amendment categorically prohibits the execution of anyone who is older than sixty-five-year-old when no state legislature in the United States has agreed to do so.

3. *Irreparable Injury*

Smithers's execution will result in his death; that is the inherent nature of a

death sentence. The factors for granting a stay are adopted from the standard applied by courts considering granting a stay in normal civil litigation, which do not naturally fit 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. Smithers has identified no irreparable harm that is not a direct consequence of the valid, constitutional, and long-final death sentences that were imposed for his murders of Christy Cowan and Denise Roach.

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 Smithers was sentenced to death occurred in 1996, and his death sentence has been final since 2003. Smithers fails this factor as well. Accordingly, this Court should deny the motion to stay.

Finally, in the final paragraph of Smithers' stay application, he asserts without any argument, for the first time, that the "abbreviated scheduling order . . . prevented his ability to be meaningfully heard during the post-warrant litigation." Motion at 3. Previously, he raised no argument related to the scheduling order and the alleged lack of time it provided him to litigate any potential claim.[1] Thus, this argument was

[1] In fact, Smithers fails to raise this argument in his petition for writ of certiorari, as

never presented or passed upon below.

This Court does not grant review of questions raised for the first time in this Court. This Court is "a court of final review and not first view." *Adarand Constructors, Inc. v. Mineta*, 534 U.S. 103, 110 (2001); *Cutter v. Wilkinson*, 544 U.S. 709, 718, n.7 (2005). This Court's traditional rule precludes a grant of certiorari when the question raised in the petition was either not presented to the lower court or was not ruled upon by the lower court. *United States v. Williams*, 504 U.S. 36, 41 (1992) (discussing the concept of "not pressed or passed upon below"); *Cardinale v. Louisiana*, 394 U.S. 437, 438 (1969) (dismissing the writ of certiorari as improvidently granted where the issue was not raised, preserved, or passed upon in the state courts below); *Walker v. Sauvinet*, 92 U.S. 90, 93 (1875). Because Smithers failed to raise any arguments about an abbreviated scheduling order previously and has not even presented it in his petition, this argument provides him with no basis for a stay.

Smithers fails to meet any of the three factors required for granting a stay of execution. Accordingly, this Court should deny the motion to stay.

Respectfully submitted,

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well. As a result, it cannot serve as "substantial grounds upon which relief might be granted."

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