

IN THE
Supreme Court of the United States

TREMANE WOOD,
Petitioner,

vs.

STATE OF OKLAHOMA,
Respondent.

**ON PETITION FOR A WRIT OF CERTIORARI
TO THE OKLAHOMA COURT OF CRIMINAL APPEALS**

REPLY IN SUPPORT OF APPLICATION FOR A STAY OF EXECUTION

***** SCHEDULED FOR NOVEMBER 13, 2025 *****

TO THE HONORABLE BRETT KAVANAUGH, ASSOCIATE JUSTICE OF THE
SUPREME COURT:

The state has not shown that a stay is unwarranted to allow this Court to fully consider the merits of Mr. Wood's petition, in which he alleges violations of *Brady v. Maryland*, 373 U.S. 83 (1963), and *Napue v. Illinois*, 360 U.S. 264 (1959), at his 2004 capital-murder trial; and of *Williams v. Pennsylvania*, 579 U.S. 1 (2016), by the Oklahoma Court of Criminal Appeals in connection with the adjudication of those claims.

The state first contends that Mr. Wood cannot show a likelihood that the Court will grant review, let alone reverse the court below, because, it says, his claims are meritless. But it is raising the factual contention that the cooperation memorandum on which his *Brady* and *Napue* claims rely was superseded by later events for the first time in this Court. Both lower courts accepted as credible the testimony of prosecutor George Burnett that the memorandum reflected the actual deal with Brandy Warden. The cooperation memorandum indicates that the true agreement with Brandy Warden involved a 35-year sentence, rather than the 45-year sentence reflected in the plea agreement, her trial testimony, and the prosecutors' closing arguments. The ruse by which the prosecutors

fulfilled the promised 35-year sentence required them to ensure that Ms. Warden's pending deferred sentence in another county was not accelerated to a felony conviction. The lower courts dismissed the significance of the memorandum by saying that "unknown reasons" led the memorandum to reflect the 35-year sentence. But if, as prosecutor George Burnett testified at the reference hearing, the cooperation memorandum rather than the plea agreement reflected the true extent of the benefits that Ms. Warden was promised and in fact received in exchange for her testimony, then the memorandum was not, in fact, superseded. The fact that Ms. Warden's sentence was later reduced to 35 years, just as the cooperation memorandum promised, further shows that the memorandum was not superseded. In this way, the prosecutors fulfilled their promise to Ms. Warden. See *Santobello v. New York*, 404 U.S. 257, 262 (1971).

The state's attempt to portray the content of the *ex parte* communications between Attorney General Drummond and Chief Judge Lumpkin as "unrelated to" Mr. Wood's *Brady* and *Napue* claims cannot stand in light of *Williams v. Pennsylvania*, 579 U.S. 1 (2016). Mr. Wood was entitled to a fair and impartial adjudication of his *Brady* and *Napue* claims by each judge on a multi-member court like the Oklahoma Court of Criminal Appeals. The *ex parte* communications accused Mr. Wood of serious criminal activity. A reasonable observer could conclude that there was an intolerably high risk that a judge who learned of, and indulged, such accusations while entertaining a request for a new trial would not be impartial.

The state next contends that Mr. Wood cannot show irreparable harm. In his stay application, he asserted that there was "no harm more irreparable than a wrongful execution." (App. for Stay at 5) Pointing to Mr. Wood's *clemency application*, which may be granted "for any reason without reference to any standards," *Solem v. Helm*, 463 U.S. 277, 300–01 (1983), the state contends that Mr. Wood cannot show irreparable harm because he "admits his guilt of felony murder and does not contest that he committed the pizza restaurant armed robbery that supported the jury's finding that he poses a continuing threat to society." (Resp. to App. for Stay at 6) This is not an argument that ultimately is grounded in this Court's modern death-penalty jurisprudence.

For one thing, every criminal defendant, including those accused of capital murder, is entitled to a fair trial in a fair tribunal. *Turner v. Louisiana*, 379 U.S. 466, 472 (1965) (quoting *In re Murchison*, 349 U.S. 133, 136 (1955)). For another, this Court's modern death-penalty jurisprudence requires "meaningful appellate review of death sentences" because such review "promotes reliability and consistency." *Clemons v. Mississippi*, 494 U.S. 738, 749 (1990) (citing *Gregg v. Georgia*, 428 U.S. 153, 204–06 (1976)). To ignore the possibility of an unfair capital-murder trial and to dispense with appellate review of a death sentence, simply because a person has taken responsibility for and expressed remorse for his role in a felony murder in connection with executive clemency proceedings, is utterly inconsistent with these foundational aspects of our legal system. The harm that Mr. Wood seeks to avoid is punishment for a crime imposed after a demonstrably unfair and unconstitutional trial. Executing him in the face of a strong

likelihood that he can show that his trial and resulting death sentence in fact *were* unfair is what makes that harm irreparable.

Finally, the state contends that the balance of the “equities and harms weighs against” Mr. Wood. (Resp. to App. for Stay at 7) But the state’s balances are off kilter. It is correct to say that the crimes for which Mr. Wood was convicted took place nearly 24 years ago. It is equally correct that the state successfully hid the evidence on which Mr. Wood’s claims rely for almost all of that time. And the state’s lack-of-diligence concerns are overblown, if not completely beside the point. The state agrees that Mr. Wood was diligent in initiating the current round of postconviction proceedings. (Resp. to App. for Stay at 8) Mr. Wood is not seeking a stay of execution in order to allow him more time to *file* for certiorari review in this Court. *Cf. Sullivan v. Wainwright*, 464 U.S. 109, 110 (1983) (per curiam) (construing filing as “an application for a stay pending filing of a writ of certiorari under 28 U.S.C. § 2101(f)”). He is seeking more time to allow this Court to decide whether to grant review. Nothing about Mr. Wood’s litigation timetable suggests that he did not come to this Court with clean hands when he sought a stay.

The Court should grant a stay of execution and the petition for certiorari.

Respectfully submitted:

November 11, 2025.

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