Capital Case No. 26A686

IN THE
SUPREME COURT OF THE UNITED STATES

THOMAS M. OVERTON

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 NOVEMBER 19, 2026, AT 6:00 P.M.

Thomas M. Overton, a Florida prisoner under an active death warrant with an execution scheduled for November 19, 2026, asks this Court to stay his execution for the first-degree murder Michael MacIvor and S.M.,[1] while it considers whether to grant certiorari. However, the questions Overton presents (clemency and the denial of clemency records) 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, Overton's questions do not merit this Court's review. Therefore, this Court should deny the stay.

[1] The victim's initials are used herein due to the sexual nature of the crime.

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, Overton 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). Overton cannot satisfy these requirements.

In his petition for certiorari, Overton asks this Court to determine the constitutionality of Florida's clemency process, which gives Florida's Executive "unfettered discretion" is deciding whether to grant clemency. He also asks this Court to decide whether the denial of records related to the clemency process under state law violates the Fourteenth Amendment. Overton has very little chance of success on the merits of his petition. The Florida Supreme Court noted its well settled state law regarding post-warrant demands for clemency records and applied its precedent affirming the denial of the demand. *Overton v. State*, No. SC2026-1724, 2026 WL 3512637 at *4 (Fla. Nov. 13, 2026). The Florida Supreme Court also relied upon its precedent that Florida's clemency and death warrant process meet the minimal constitutional due process standards. *Id.* at *5. Neither question warrants certiorari review, much less, satisfies the high standard for granting a stay of an execution for a thirty-five-year-old double homicide committed during a burglary and sexual

battery which also resulted in the murder of the female victim's viable baby boy. Overton has not shown that Florida's clemency procedures warrant review or that the application of state law conflicts with a decision of this Court, a federal circuit court, or another state supreme court. There is no basis necessitating this Court's review.

Stays of Execution

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). Equity does not reward last-minute litigation designed to delay the imposition of lawful sentences. *See Nelson*, 541 U.S. at 650 (holding that there is a "strong equitable presumption against the granting 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 nature of Overton's claims challenging the clemency process and denial of confidential clemency records weighs heavily against a stay.

"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, 149-51 (2019). The people of Florida, as well as surviving victims and their families, "deserve better"

than the "excessive" delays that now typically occur in capital cases. *Id*. at 149. This 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. Also, this Court has stated that last-minute stays of execution should be the "extreme exception, not the norm." *Id*.

To be granted a stay of execution, Overton must establish three factors: (1) a reasonable probability that the Court would vote to grant certiorari; (2) a significant possibility of reversal if review were granted; and (3) a likelihood of irreparable injury to the applicant in the absence of a stay. *Barefoot*, 463 U.S. at 895. Overton must establish all three factors, however, he has not.

Probability of This Court Granting Certiorari

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 here. As explained in greater detail in the accompanying brief in opposition, this Court lacks jurisdiction to even entertain the petition since Florida law mandates that the requested records are confidential and exempt from production. Furthermore, the records could not give rise to any colorable claims for relief since the Florida Constitution and statutory law give the Governor absolute discretion to decisions on clemency and the issuance of death warrants on defendants whose cases are final. There is a low probability of this Court granting certiorari review. Overton fails the first Barefoot factor, which alone is sufficient reason to deny his request for a stay because he is required to establish

all three factors. Moreover, Overton has cited no conflict or unsettled question of law for this Court's review.

This Court has stated that "pardon and commutation decisions have not traditionally been the business of courts; as such, they are rarely, if ever, appropriate subjects for judicial review." *Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 272, 276 (1998) (quoting *Conn. Bd. of Pardons v. Dumschat*, 452 U.S. 458, 464 (1985)). Even if "some *minimal* procedural safeguards apply to clemency proceedings," *Woodard*, 523 U.S. at 289 (O'Connor, J., concurring) (original emphasis), they were satisfied when Overton was appointed clemency counsel, submitted an application and information for clemency, and was granted an interview. The Constitution does not require the States to enact a specific clemency mechanism, preclude a blanket denial of clemency to confessed murderers, or require a minimum number of grants of clemency per year. *Herrera v. Collins*, 506 U.S. 390, 414 (1993); *Barwick v. Gov. of Fla.*, 66 F.4th 896, 898 (11th Cir. 2023); *Guardado v. State*, No. SC2026-1605; 2026 WL 3267707 (Fla. Oct. 29, 2026), *cert. denied*, No. 26-6013, 2026 WL 3342321 (U.S. Nov. 4, 2026). Also, this Court has long recognized state law bars as a valid basis to deny certiorari review. Here again, Overton fails the first *Barefoot* factor, which alone is sufficient to deny the motion for a stay.

Even without reliance on an independent and adequate state ground to deny certiorari, the granting of certiorari is unlikely because the Florida Supreme Court found that Overton's constitutional challenge was meritless based on its multiple decisions rejecting similar challenges to the clemency process. *See Guardado v. State*,

No. SC2026-1605, 2026 WL 3267707, at *3-*5 (Fla. Oct. 20, 2026) (rejecting challenge to Florida's clemency process under *Woodard*, 523 U.S. at 289 because minimal due process does not prohibit the Governor from having a 'blanket policy' against clemency for certain offenders or require a minimum number of grants of clemency and Guardado's death warrant stated that clemency was considered and was determined 'not appropriate' in his case), *cert. denied*, No. 26-6013, 2026 WL 3342321 (U.S. Nov. 5, 2026); *Reaves v. State*, No. SC2026-1512, 2026 WL 3071534, at *2-*3 (Fla. Oct. 14, 2026) (emphasizing "the unlimited discretion vested solely in the executive branch, both to decide whether to grant clemency and to establish the procedures governing the clemency process;" and that a capital defendant does not have "any entitlement to records relating to his clemency proceeding" nor does a defendant have a "constitutional right to the effective assistance of clemency counsel"), *cert. denied*, No. 26-5865, 2026 WL 3132759 (U.S. Oct. 20, 2026); *Jennings v. State*, 422 So. 3d 107, 114–16, 120 (Fla.) (finding where defendant had no good cause for failing to raise clemency claim earlier, it was procedurally barred under Fla. R. Crim. P. 3.851(e)(2)), *cert. denied*, 146 S. Ct. 402 (2025). See also *Randolph v. State*, 422 So. 3d 166, 174 (Fla.) (rejecting constitutional challenges to clemency process), *cert. denied*, 146 S. Ct. 819 (2025); *Zakrzewski v. State*, 415 So. 3d 203, 211 (Fla.), *cert. denied*, 146 S. Ct. 57 (2025); *Marek v. State*, 14 So. 3d 985, 998 (Fla.), *cert. denied*, 557 U.S. 960 (2009). Overton's challenge to his clemency process does not warrant certiorari consideration and shows that it is unlikely certiorari would be granted.

Significant Possibility of Reversal

As to the second factor, there is not a significant possibility of reversal on the issues raised by Overton. The repeated acknowledgement of the unlimited discretion vested in the Governor to decide clemency issues and the facts that the denial of clemency records rest on the state law ground that records demands must be relevant to a colorable claim shows the possibility of reversal is low. Additionally, since the records issue is solely a matter of state law, there is no possibility that Overton could meet the second factor of this Court granting relief on the merits. This Court must defer to the requirements of Florida law regarding the confidentiality of the requested records, making them exempt from disclosure.

Irreparable Injury

As to the third factor of irreparable injury, there is none. While the execution will result in Overton'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. In the capital context, more should be required for irreparable injury rather than the execution itself. Otherwise, this factor would automatically be satisfied in every capital case. In other contexts, this Court has clarified that the "purpose of such a stay is to prevent the execution date from 'interfer[ing] with the orderly processing of a petition on direct review by this Court.'" *Rodriguez v. Texas*, 515 U.S. 1307, 1307-08 (1995). And in *Williams v. Missouri*, 463 U.S. 1301, 1301-02 (1983), this Court explained that a stay would be warranted to prevent a defendant

from being executed before having the opportunity to fully present his claim that his death sentence was unconstitutionally imposed. But those situations do not exist here. Likewise, this is not a case in which denying his stay would result in the execution of a defendant who should not be executed. Overton has identified no irreparable harm that is not a direct consequence of his valid, constitutional, and long-final death sentences for the brutal murders of Michael MacIvor and S.M. He faces no actual identifiable harm by the denial of his motion for stay under these circumstances, thus he fails the third stay factor as well. As discussed above, neither of his questions merit certiorari review. The denial of a stay will not hamper review of his claims.

Further, 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. Here, Overton does not provide any unique or special argument as to why a last-minute stay is warranted in his specific case that outweighs the State's interest in enforcing the law. Without finality, "the criminal law is deprived of much of its deterrent effect." *Calderon v. Thompson*, 523 U.S. 538, 555-56 (1998). The real finality is the execution. Because Overton points to no specific argument in support of this factor other than the imposition of his lawful sentence, he fails this prong as well.

Overton fails to meet any of the three *Barefoot v. Estelle* 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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