IN THE SUPREME COURT OF FLORIDA

CARY MICHAEL LAMBRIX,

Appellant,

v. **CASE No.: SC16-8**
CASE No. SC16-56

STATE OF FLORIDA,

Appellee.
_____/

RENEWED MOTION FOR A STAY OF EXECUTION AND AN UNTRUNCATED BRIEFING SCHEDULE

COMES NOW THE DEFENDANT, CARY MICHAEL LAMBRIX, by and through his undersigned attorney, and herein renews his prior motion for a stay of execution in light of the issuance of an opinion by the United States Supreme Court on January 12, 2016 in the case of *Hurst v. Florida*, No. 14-7505, 2016 WL 112683 (Jan. 12, 2016). In support thereof, Mr. Lambrix would state:

On November 30, 2015 Governor Scott signed a death warrant for Mr. Lambrix. The execution is scheduled for February 11, 2016 at 6:00 p.m. On January 11, 2016, Mr. Lambrix timely filed his Initial Brief in the appeal from the summary denial of his Rule 3.851 motion under warrant. He also filed a Petition for Writ of Habeas Corpus and a Request for Oral Argument. Mr. Lambrix respectfully renews his requests that this Court stay the execution in light of the matters raised in both his Initial Brief and in the Habeas Petition for reasons set forth below.

Undersigned Counsel received transmission of an Order dated January 12, 2016 at 11:59 a.m. on this date amending the previous scheduling Order. It requires the Respondent to include in its previously scheduled response to the habeas petition "the applicability of *Hurst v. Florida*, No. 14-7505, 2016 WL 112683 (Jan. 12, 2016) to each of Petitioner's first-degree murder convictions and sentences of death." The Order also requires the Respondent to address retroactivity of *Hurst*, the effect of *Hurst* "in light of the aggravating factors found by the trial court" and whether "any error in Lambrix's case is harmless." Then the Order requires Petitioner's scheduled Reply on January 20, 2016 to address these same issues.

In his pending state habeas petition filed on January 11, 2016, Mr. Lambrix included argument concerning the relationship between preserved error at trial concerning the sentencing jury that implicated *Caldwell v. Mississippi*, 472 U.S. 320 (1985), which this Court had previously found is inapplicable in Florida. *Hurst* has now found that the death sentencing system in Florida is unconstitutional.[1]

Neither *Caldwell* nor the Eighth Amendment are specifically mentioned in the

[1] See Florida Statues 775.082(2): ("In the event the death penalty in a capital felony is held to be unconstitutional by the Florida Supreme Court or in the United States Supreme Court, the court having jurisdiction over a person previously sentenced to death for a capital felony shall cause such person to be brought before the court, and the court shall sentence such person to life imprisonment as provided in subsection (1).").

United States Supreme Court's *Hurst* majority opinion.[2] However, the potential retroactivity of *Hurst*, pursuant to a *Witt* analysis by this Court, to Mr. Lambrix's under death warrant case and potentially to many, many other cases in a successive postconviction status like Mr. Lambrix's, is an issue that demands an untruncated briefing schedule and oral argument before this Court, not an emergency briefing under an active death warrant added to the previously scheduled final briefing due by next Wednesday and prospective oral argument scheduled on February 2, 2016.

By untruncated counsel simply means a normal, rational, and reasonable schedule that is not infected with time pressure that by its very nature will render counsel ineffective in light of the significance of *Hurst*, to wit, "We hold this sentencing scheme unconstitutional, The Sixth Amendment requires a jury, not a judge, to find each fact necessary to impose a sentence of death. A jury's mere recommendation is not enough." *Hurst* at 3.

Another issue also demands an untruncated briefing schedule and oral argument before this Court. That issue is the State's penalty phase waiver of both argument to the jury and jury instruction on the prior violent felony/contemporaneous felony aggravating factor and the subsequent failure of Mr. Lambrix's sentencing jury to consider the prior violent felony/contemporaneous

[2] *But see Hurs*t at 9, Breyer, J., *concurring in the judgment*, ("I concur in the judgment here based on my view that the Eighth Amendment requires that a jury, not a judge, make the decision to sentence a defendant to death.").

felony aggravating factor. There was *Hurst* error where the contemporaneous felony aggravating factor was later found and relied on by the sentencing judge when he sentenced Mr. Lambrix to death over the objection of trial counsel and in light of the non-unanimous jury recommendations of 8 to 4 and 10 to 2. And if there was *Hurst* error, was it harmless error.

The instant motion for stay and for an untruncated briefing schedule in no way waives any claims in the Initial Brief or pending state habeas corpus petition, or additional briefing or argument thereon. This Court should grant an immediate and indefinite stay of execution and schedule full briefing so that the implications of the *Hurst* decision may be conducted in a reasonable manner in this Court and not under the circumstances of an active death warrant.

WHEREFORE, Mr. Lambrix requests an indefinite stay of execution, a new briefing schedule, and expanded briefing on all *Hurst* related matters.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been provided to: Scott A. Browne, Assistant Attorney General, Office of the Attorney General, 3507 East Frontage Road, Ste. 200, Tampa, FL 33607-7013, *Scott.Browne@myfloridalegal.com*; Capital Appeals Intake Box, *capapp@myfloridalegal.com*; via email service at *warrant@flcourts.org* this 13th day of January 2016.

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