IN THE SUPREME COURT OF FLORIDA

CARY MICHAEL LAMBRIX,

Appellant/Petitioner,

v.

STATE OF FLORIDA/
JULIE L. JONES, ETC.

Appellee/Respondents.
_____/

CASE NOS. SC16-8/SC16-56
L.T. No. 83-12-CF

DEATH WARRANT SIGNED
EXECUTION SCHEDULED FOR
FEBRUARY 11, 2016 AT 6:00 PM

APPELLEE'S RESPONSE TO APPELLANT'S RENEWED MOTION FOR STAY AND AN UNTRUNCATED BRIEFING SCHEDULE

COMES NOW, the State of Florida, by and through the undersigned attorneys, and files its Response to Appellant's Motion for Stay of Execution and states that a stay would be inappropriate because he has unduly delayed presenting his claims, it is essentially a dilatory request to investigate yet another ground to raise in yet another successive motion for post-conviction relief, and would be both untimely and procedurally barred. This stay request should be denied.

On November 30, 2015, Governor Rick Scott signed Lambrix's second death warrant, and execution was scheduled for February 11, 2016. On December 15, 2015, Lambrix filed his seventh successive motion for post-conviction relief. On December 21, 2015, the lower court denied his successive motion. On January

11, 2016, Lambrix filed his initial brief and a petition for writ of habeas corpus.

Appellant complains about having to litigate his case under a truncated schedule in light of the Supreme Court's decision in Hurst v. Florida, --- S. Ct. ----, 2016 WL 112683 (January 12, 2016). The State objects to any stay or alteration of this Court's schedule. This Court has already amended the schedule to provide Appellant additional time to file his reply brief which will certainly address the application of Hurst. Lambrix seeks an "indefinite" stay, suggesting that the real reason for this motion is simply to inject additional delay in a case that has lingered far too long in Florida's court system.

While there are certainly pipeline direct appeal cases before this Court which will undoubtedly present weighty questions for this Court's determination, this is not one of those cases. There is simply no reasonable likelihood that Hurst will have any application to Lambrix. The underlying claim is untimely, procedurally barred from review, and should not be applied retroactively.[1] Consequently, a stay would be

[1] Rule 3.851(d)(2)(B) provides that a motion for post-conviction relief may be filed out of time only where "the fundamental constitutional right asserted was not established within the time period provided for in subdivision (d)(1) and has been held to apply retroactively." However, Hurst did not create or recognize any new constitutional right, and it has not been held to apply retroactively.

particularly inappropriate. When a constitutional rule is announced, its requirements apply to defendants whose convictions or sentences are pending on direct review or not otherwise final. Griffith v. Kentucky, 479 U.S. 314, 323, 107 S. Ct. 708, 713 (1987). Lambrix's conviction and sentence were final in 1986, long before even Ring[2] was decided. Since Ring itself is not retroactive, a decision expanding Ring to hold Florida's statute unconstitutional should not satisfy the stringent requirements needed to disrupt finality. Schriro v. Summerlin, 542 U.S. 348, 124 S. Ct. 2519 (2004); see also Peede v. State, 955 So. 2d 480, 498 (Fla. 2007) ("Peede's death sentence became final long before Ring was decided in 2002; therefore, Peede cannot rely on Ring to find his death sentence unconstitutional.") (citations omitted); Johnson v. State, 904 So. 2d 400, 410 (Fla. 2005) (applying the Witt factors to hold that Ring would not be applied retroactively in Florida).

Further, Appellant, unlike Hurst, was convicted of qualifying contemporaneous felony convictions for a capital offense [death sentences supported by contemporaneous murders of victims Moore and Bryant]. These qualifying convictions, found by the jury and the trial court, supported the aggravator of conviction of another capital felony or of a felony involving

[2] Ring v. Arizona, 536 U.S. 584, 122 S. Ct. 2428 (2002).

use or threat of violence to the person. These convictions establish that a unanimous jury found Appellant eligible for the death penalty at the guilt phase of his trial, precluding the finding of any Hurst or Ring based error. See Ellerbee v. State, 87 So. 3d 730, 747 (Fla. 2012) ("This Court has consistently held that a defendant is not entitled to relief under Ring if he is convicted of murder committed during the commission of a felony, or otherwise where the jury of necessity has unanimously made the findings of fact that support an aggravator.") (string cites omitted).

An alteration of the briefing schedule presently before the Court is simply not warranted by the Hurst decision. Lambrix's request for a stay should be denied. It is time for Lambrix's sentence for these brutal murders to be carried out. The equities in this case tilt decidedly against Lambrix in favor of the State and the victims' family members. Gomez v. United States Dist. Court, 503 U.S. 653, 654, 112 S. Ct. 1652, 1653 (1992) (Observing that "[e]quity must take into consideration the State's strong interest in proceeding with its judgment. . ."); Hill v. McDonough, 464 F.3d 1256, 1259 (11th Cir. 2006) (refusing to grant a stay and discussing strong equitable principles against a stay).

WHEREFORE, the State respectfully requests that Appellant's renewed motion for stay and untruncated briefing schedule be denied.

Respectfully submitted,

PAMELA JO BONDI
ATTORNEY GENERAL

s/ Scott A. Browne

SCOTT A. BROWNE
Senior Assistant Attorney General
Florida Bar No. 0802743
scott.browne@myfloridalegal.com

s/ C. Suzanne Bechard

C. SUZANNE BECHARD
Assistant Attorney General
Florida Bar No. 0147745
Office of the Attorney General
3507 East Frontage Road, Suite 200
Tampa, Florida 33607-7013
Telephone: (813) 287-7910
Facsimile: (813) 281-5501
carlasuzanne.bechard@myfloridalegal.com
E-Service: capapp@myfloridalegal.com

COUNSEL FOR APPELLEE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of January, 2016, a true and correct copy of the foregoing has been furnished electronically to the Clerk of the Florida Supreme Court at **warrant@flcourts.org**; and to William M. Hennis, III, Litigation Director and Jessica Houston, Staff Attorney, Office of the Capital Collateral Regional Counsel - South, One East Broward Boulevard, Suite 444, Fort Lauderdale, Florida 33301 at **hennisw@ccsr.state.fl.us** and **houstonj@ccsr.state.fl.us.**

CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this response is 12-point Courier New, in compliance with Fla. R. App. P. 9.210(a)(2).

s/ Scott A. Browne
COUNSEL FOR APPELLANT