

**IN THE SUPREME COURT OF FLORIDA**

JOSE ANTONIO JIMENEZ,

Appellant,

CASE NO. SC18-1247

L.T. No. 92-34156-CF

v.

STATE OF FLORIDA,

DEATH WARRANT SIGNED  
EXECUTION SCHEDULED FOR  
December 13, 2018 AT 6:00 PM

Appellee.

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**STATE'S RESPONSE TO APPLICATION FOR STAY OF EXECUTION**

COMES NOW, the State of Florida, by and through the undersigned attorneys, and files its Response to Defendant's request for a stay of execution and respectfully requests that the stay be denied.

A stay of execution is equitable relief and Jimenez has not come close to meeting his burden of establishing his entitlement to such relief. Both this Court and the United States Supreme Court have held that a defendant must show that he has presented substantial grounds for relief from his conviction and sentence in order to be entitled to a stay. *See Buenoano v. State*, 708 So. 2d 941, 953 (Fla. 1998); *Delo v. Stokes*, 495 U.S. 320, 321 (1990); *Barefoot v. Estelle*, 463 U.S. 880, 895 (1983); *Bowersox v. Williams*, 517 U.S. 345 (1996). Jimenez has not presented any substantial grounds for relief and, indeed, has presented no viable ground for relief in this Court.

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Opposing counsel's pro forma motion to stay only asserts that more time is needed for his arguments on the applicability of Amendment 11 to be fully heard and properly considered, asserting that there is a significant possibility of relief. That is not accurate since the issue is plainly meritless. As discussed more thoroughly in the State's Response to the Petition for Habeas Corpus, Jimenez is essentially seeking to re-litigate this Court's determination that *Hurst v. State*, 202 So.3d 40, 60 (Fla. 2016) is not retroactive to his case because it was final before the issuance of *Ring v. Arizona*, 120 S.Ct 2348 (2002) and his jury returned a unanimous recommendation for death. His claim is procedurally barred and the doctrine of *res judicata* bars him from re-raising it here.

Amendment 11 is not currently law and is not self-executing: It does not independently operate to reduce or alter any criminal punishment. The Legislature will have the authority to determine which changes in the criminal code, if any, it wishes to be retroactive. Further, Amendment 11 does not alter the fact that Chapter 2017-1 did not change the penalty for first degree murder nor did that new statute governing penalty phase trials was not made retroactive by the Legislature when they passed it. There is little to no possibility of Jimenez prevailing on the claims in his current habeas petition. Therefore, the application for stay should be denied.

WHEREFORE, the State respectfully requests that this Honorable Court deny a stay of execution.

Respectfully submitted,

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CO-COUNSEL, STATE OF FLORIDA

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 11th day of December 2018, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to: Martin J. McClain, Esq., 141 N.E. 30th St., Wilton Manors, Florida 33334, **[martymcclain@comcast.net](mailto:martymcclain@comcast.net)**.

/s/ Lisa-Marie Lerner  
Counsel for Respondents