

In the Supreme Court of Florida

EXECUTION SCHEDULED FOR
THURSDAY, AUGUST 22, 2019 @ 6:00 p.m.

GARY RAY BOWLES,

Petitioner,

v.

CASE NO.: SC19-1184
CAPITAL CASE

STATE OF FLORIDA,

Respondent.

_____/

STATE'S RESPONSE TO MOTION FOR STAY OF THE EXECUTION

On July 26, 2019, Bowles, represented by Capital Collateral Regional Counsel - North (CCRC-N) and the Capital Habeas Unit of the Federal Public Defender Office of the Northern District of Florida (CHU-N), filed a motion to stay his execution. The stay should be denied because there is sufficient time for this Court to decide the two issues pending before the Court in this case without a stay.

Motions to stay executions

A stay of execution is warranted only when there are substantial grounds upon which relief might be granted. *Chavez v. State*, 132 So.3d 826, 832 (Fla. 2014) (citing *Bowersox v. Williams*, 517 U.S. 345 (1996), and denying a stay); *Howell v. State*, 109 So.3d 763, 778 (Fla. 2013) (stating that a defendant must

show that there are substantial grounds upon which relief might be granted to obtain a stay of execution and denying a stay).

There are no substantial grounds being raised in this case because there is controlling precedent regarding most of the issues being raised in the initial brief. The sole claim that was raised in the trial court in this case was an intellectual disability claim based on *Atkins v. Virginia*, 536 U.S. 304 (2002), and *Hall v. Florida*, 572 U.S. 701 (2014). The trial court denied the claim as untimely. But there is controlling precedent from this Court affirming the summary denials of intellectual disability claims as time-barred. Indeed, there two unanimous, published opinions from this Court affirming the denial without an evidentiary hearing of *Atkins* claims as untimely. *Blanco v. State*, 249 So.3d 536, 537 (Fla. 2018), *cert. denied*, *Blanco v. Florida*, 139 S.Ct. 1546 (2019), and *Harvey v. State*, 260 So.3d 906, 907 (Fla. 2018), *pet. for cert. filed*, *Harvey v. Florida*, No. 18-1449 (May 17, 2019).

There is also controlling precedent regarding one of the public records claims being raised as the second issue in the initial brief regarding records relating to lethal injection procedures. This Court recently rejected this same due process and equal protection argument regarding similar public records requests on the ME, DOC, and FDLE in *Long v. State*, 271 So.3d 938, 947-48 (Fla. 2019), *cert. denied*, *Long v. Florida*, 139 S.Ct. 2635 (2019).

Alternatively, Bowles asserts this Court should grant a stay of execution to allow time for the United States Supreme Court to consider Bowles' claim in the future petition for a writ of certiorari regarding the constitutional concerns of applying time bars in intellectual disability cases, "without the exigencies of an imminent execution." Motion at 3. But the motion to stay was filed in the wrong court. Opposing counsel is seeking a stay in the Florida Supreme Court for the

United States Supreme Court to have additional time to decide the not-as-yet filed petition. Any motion to stay for the United States Supreme Court to have additional time should be filed in the United States Supreme Court itself. The appropriate court to file a motion to stay for a court to have additional time to consider the issues before it, is the court in question, not another court. The United States Supreme Court can decide for itself whether they require more time to decide the petition without this Court's help. Courts do not issue stays for other courts. And state courts do not enter stays for the United States Supreme Court.

Furthermore, it is not clear that the United States Supreme Court needs any additional time. The United States Supreme Court, just like this Court and the Eleventh Circuit, is accustomed to deciding capital cases with an active warrant on an expedited basis. The United States Supreme Court often receives petitions for writ of certiorari in warrant cases the day of the scheduled execution and manages to decide those petitions. Just as this Court does, the United States Supreme Court tracks warrant litigation by receiving the pleadings filed in the lower courts, so they are currently aware of the issue and the parties' position on the issue.

Accordingly, this Court should deny the motion for stay of execution.

Respectfully submitted,

ASHLEY MOODY
ATTORNEY GENERAL OF FLORIDA

/s/ Charmaine Millsaps
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **STATE'S RESPONSE TO MOTION FOR STAY OF THE EXECUTION** has been furnished via the e-portal to **KARIN LEE MOORE**, Capital Collateral Regional Counsel-North, 1004 Desota Park Dr., Tallahassee, FL 32301-4555; phone: 850-487-0922; email: karen.moore@ccrc-north.org; **ELIZABETH SPIAGGI**, Capital Collateral Regional Counsel-North, 1004 Desota Park Dr., Tallahassee, FL 32301-4555; phone: 850-487-0922; email: Elizabeth.Spiaggi@ccrc-north.org; **TERRI BACKHUS**, Chief, Capital Habeas Unit, Office of the Federal Public Defender, Northern District of Florida, 227 N. Bronough Street, Suite 4200, Tallahassee, FL 32301-1300; phone: (850) 942-8818; email: terri_backhus@fd.org; **KIMBERLY L. SHARKEY**, Capital Habeas Unit of the Office of the Federal Public Defender of the Northern District of Florida, 227 N. Bronough Street, Suite 4200, Tallahassee, FL 32301-1300; phone: (850) 942-8818; email: kimberly_sharkey@fd.org this 2nd day of August, 2019.

/s/ Charmaine Millsaps
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