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IN THE SUPREME COURT OF FLORIDA

GARY RAY BOWLES,

Petitioner,

Case No. _____

v.

EXECUTION SCHEDULED FOR AUGUST 22, 2019, At 6:00 P.M.

MARK S. INCH,
Secretary, Fla. Dept. of Corr.

Respondent.
_____/

PETITIONER'S MOTION FOR STAY OF EXECUTION

Petitioner Gary Ray Bowles moves for a stay of his scheduled August 22, 2019, execution of sentence of death.

On July 26, 2019, Mr. Bowles filed an initial brief in this Court on appeal from the Duval County Circuit Court's July 8, 2019, order summarily denying his motion for postconviction relief based on intellectual disability.

As detailed in Mr. Bowles's brief, the circuit court refused to consider on the merits whether Mr. Bowles is in fact intellectually disabled and therefore ineligible for execution under the Eighth Amendment. Instead, the circuit court ruled that Mr. Bowles's claim was time-barred under this Court's decisions in *Rodriguez v. State*, 250 So. 3d 616 (Fla. 2016), *Blanco v. State*, 249 So. 3d 536 (Fla. 2018), and *Harvey v. State*, 260 So. 3d 906 (Fla. 2018), which hold that intellectually disabled individuals *can* be executed, consistent with the Eighth Amendment, if those

individuals did not file their claim by a certain date. In his initial brief, Mr. Bowles argues, among other things, that this Court's state procedural rule allowing for the execution of certain intellectually disabled individuals like Mr. Bowles violates the Eighth Amendment in light of the United States Supreme Court's decisions in *Atkins v. Virginia*, 536 U.S. 304 (2002), *Hall v. Florida*, 572 U.S. 701 (2014), and *Moore v. Texas*, 137 S. Ct. 1039 (2017), which make clear that intellectual disability is a categorical, non-waivable bar to execution. The United States Constitution does not permit this Court to apply a state procedural rule barring any merits inquiry into whether an individual scheduled for execution is in fact intellectually disabled, particularly where the is a strong evidentiary proffer made.[1]

It is appropriate for a capital defendant to request a stay pending the orderly resolution of his claims before the "irremediable act of execution is taken." *Shaw v. Martin*, 613 F.2d 487, 492 (4th Cir. 1980). This Court has granted stays of execution on numerous occasions. A stay of execution is appropriate in this case so that a

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[1] Also on July 26, 2019, Mr. Bowles filed in this Court an original petition for a writ of habeas corpus challenging the death sentence imposed against him as cruel and unusual, and contrary to the evolving standards of decency, in violation of the Eighth Amendment and the corresponding provisions of the Florida Constitution. In the circuit court, Mr. Bowles has also made numerous, narrowly tailored demands for public records pursuant to Fla. R. Crim. P. 3.852 pertaining to records from state agencies, including the Florida Department of Corrections as well as prosecution and law enforcement agencies. The circuit court denied the public records requests, and these rulings are addressed in Mr. Bowles's initial brief in this Court. These issues also make a stay of execution appropriate.

proper evidentiary hearing, denied by the circuit court, can be ordered by this Court and conducted accordingly. The nature of the issues in this litigation require appellate review that is not truncated by the exigencies of an execution. A stay should be granted now, prior to this Court's ruling on Mr. Bowles's appellate and habeas claims.

Alternatively, if this Court denies a stay pending this appeal and affirms the judgment of the circuit court, Mr. Bowles requests that a stay be entered pending the filing and disposition of a petition for certiorari on the question of whether this Court's decisions in *Rodriguez*, *Blanco*, and *Harvey*, violate the Eighth Amendment in light of the United States Supreme Court's intellectual disability jurisprudence. Whether the state-created procedural rule here—the foreclosure of any merits review created by *Rodriguez*, *Blanco*, and *Harvey*—creates such an unacceptable risk of the execution of the intellectually disabled has not yet but should be addressed by the United States Supreme Court. Just as Florida's prior bright-line rule for qualifying IQ scores has been addressed by the Supreme Court in *Hall v. Florida*, so too should the Supreme Court be allowed time to resolve the important constitutional concerns created by Florida's recent procedural bar application in intellectual disability cases, without the exigencies of an imminent execution.

A stay of execution should be granted.

Respectfully submitted,

/s/ Terri Backhus
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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic service to Terri Backhus, Chief, Capital Habeas Unit, Federal Public Defender for the Northern District of Florida (terri_backhus@fd.org); Bernie de la Rionda (bdelarionda2@gmail.com); Assistant State Attorney Sheila Ann Loizos (sloizos@coj.net); Assistant Attorney General Jennifer A. Donahue (jennifer.donahue@myfloridalegal.com), Assistant Attorney General Charmaine Millsaps (Charmaine.millsaps@myfloridalegal.com), (capapp@myfloridalegal.com), the Circuit Court of the Fourth Judicial Circuit (pfields@coj.net), and the Florida Supreme Court (warrant@flcourts.org) this 26th day of July, 2019.

/s/ *Karin Moore*	/s/ *Terri Backhus*	/s/*Elizabeth Spiaggi*
Karin Moore	Terri Backhus	Elizabeth Spiaggi