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*In the Supreme Court of Florida*

CASE NO. SC19-1264

GARY RAY BOWLES, *Petitioner*,

v.

MARK S. INCH,
Secretary, Florida Department of Corrections, *Respondent*.

RECEIVED, 08/02/2019 03:17:08 PM, Clerk, Supreme Court

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

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 one issue being raised in the state habeas petition currently 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 the state habeas petition because there is controlling United States Supreme Court precedent rejecting the one claim being raised in the state habeas petition. The sole claim being raised in the petition is an Eighth Amendment challenge to the death penalty itself. But there is controlling precedent from the United States Supreme Court precedent upholding the death penalty against the same Eighth Amendment challenges. Indeed, there is literally a string cite of such cases. *Glossip v. Gross*, 135 S.Ct. 2726, 2732-33 (2015) (recognizing that because "it is settled that capital punishment is constitutional, it necessarily follows that there must be a constitutional means of carrying it out" citing *Baze v. Rees*, 553 U.S. 35, 47 (2008); *Baze v. Rees*, 553 U.S. 35, 47 (2008) ("We begin with the principle, settled by *Gregg*, that capital punishment is constitutional" and observing it "necessarily follows that there must be a means of carrying it out."); *McCleskey v. Kemp*, 481 U.S. 279,299-319(1987) (rejecting an Eighth Amendment as-applied challenge to the death penalty based on a study and observing the "Constitution does not require that a State eliminate any demonstrable disparity that correlates with a potentially irrelevant factor in order to operate a criminal justice system that includes capital punishment" and that "the Constitution does not place totally unrealistic conditions" on the use of capital punishment); *Gregg v. Georgia*, 428 U.S. 153 (1976) (holding the punishment of death for the crime of murder did not violate the Eighth Amendment); *Gregg*, 428 U.S. at 207 (White, J., concurring).

Alternatively, Bowles asserts this Court should grant a stay of execution to allow time for the United States Supreme Court to consider Bowles' Eighth Amendment challenge in a petition for writ of certiorari. Opposing counsel is

seeking a stay in this 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 Eighth Amendment challenge to capital punishment.

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

Respectfully submitted,

ASHLEY MOODY
ATTORNEY GENERAL OF FLORIDA

/s/ *Charmaine Millsaps*
CHARMAINE M. MILLSAPS
SENIOR ASSISTANT ATTORNEY GENERAL
FLORIDA BAR NO. 0989134
OFFICE OF THE ATTORNEY GENERAL
THE CAPITOL, PL-01
TALLAHASSEE, FL 32399-1050
(850) 414-3300
COUNSEL FOR THE STATE
primary email:
capapp@myfloridalegal.com
secondary email:
charmaine.millsaps@myfloridalegal.com

COUNSEL FOR THE STATE

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
Charmaine M. Millsaps
Attorney for the State of Florida