

**IN THE SUPREME COURT OF FLORIDA
CASE NO. SC23-190 & SC23-___**

DONALD DAVID DILLBECK

Appellant/Petitioner,

v.

STATE OF FLORIDA

**CAPITAL CASE
DEATH WARRANT SIGNED
EXECUTION SCHEDULED FOR
FEBRUARY 23, 2023**

Appellee/Respondent.

_____ /

APPELLANT/PETITIONER’S MOTION FOR STAY OF EXECUTION

Appellant/Petitioner Donald David Dillbeck, through undersigned counsel, respectfully moves this Court to enter a stay of his scheduled execution, currently set for February 23, 2023.

Concurrent with this motion, Mr. Dillbeck has filed an initial brief in this Court on appeal from the Leon County Circuit Court’s February 2, 2023 order summarily denying his motion for postconviction relief. This case presents important constitutional claims, including an issue of first impression regarding whether Mr. Dillbeck’s ND-PAE (recognized by the medical community as an intellectual disability-equivalent condition) entitles him to the Eighth Amendment protections laid out in *Atkins v. Virginia*, 536 U.S. 304 (2002), and progeny. As detailed in Mr. Dillbeck’s brief, the circuit court summarily denied relief without consideration of Mr. Dillbeck’s strong

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evidentiary proffer related to his eligibility for categorical exemption from execution. The circuit court also failed to consider proffered evidence which significantly undermines the predominant aggravator used to secure Mr. Dillbeck's death sentence.

Also concurrent with this motion, Mr. Dillbeck has filed a petition for a writ of habeas corpus in this Court, which includes an Eighth Amendment challenge to his death sentence due to evolving standards of decency, a sociolegal consensus establishing that death sentences must be based upon a unanimous jury vote, and a challenge to the HAC and effecting-escape aggravators used in his case.

A stay of execution is appropriate "when there are 'substantial grounds upon which relief might be granted.'" *Chavez v. State*, 132 So. 3d 826, 832 (Fla. 2014) (quoting *Buenoano v. State*, 708 So. 2d 941, 951 (Fla. 1998)). Further, this Court may enter a limited stay to meaningfully consider complex legal bases even if, on first appearance, the possibility of relief appears remote. See *King v. Moore*, 824 So. 2d 127, 128 (Fla. 2002) (Harding, J., concurring) (agreeing with the issuance of a stay due to the "possibility" of merit, despite prior actions by the United States Supreme Court "seemingly send[ing] a clear message" that no relief was due).

Stays are particularly appropriate where, as in Mr. Dillbeck's case, a warrant is set on a short timeframe. See *Jimenez v. State*, No. SC18-1321 (Fla. Aug. 10, 2018) (granting stay of execution on a 27-day warrant and modifying *nunc pro tunc* the expedited post-warrant scheduling order, without making any findings of substantiality on any issue); see also *Jimenez v. State*, 265 So. 3d 462, 493 (Fla. 2018) (Pariente, J., concurring) (explaining that the "extremely short warrant period" meant that "[t]he postconviction court and Jimenez's attorneys were forced to race against the clock in reviewing and presenting all of Jimenez's claims, respectively" and that without a stay there would be "inadequate time to thoroughly review his claims.").¹

The issues in this litigation require appellate review that is not truncated by the exigencies of an imminent execution. A stay of execution should be granted.

¹ The warrant period in Mr. Dillbeck's case is a mere four days longer than the period in Mr. Jimenez's case.

Respectfully Submitted,

/s/ Baya Harrison

Baya Harrison
Florida Bar No. 099568
BAYA M. HARRISON, P.A.
P.O. Box 102
Monticello, FL 32345
(850) 997-8469
bayalaw@aol.com

/s/ Linda McDermott

Linda McDermott
Florida Bar No. 0102857
Chief, Capital Habeas Unit
Office of the Federal Public Defender
227 N. Bronough St, Suite 4200
Tallahassee, FL 32301
(850) 942-8818
Linda_McDermott@fd.org

Counsel for Appellant/Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing pleading has been furnished by electronic service to all counsel of record on this 10th day of February 2023.

/s/ Linda McDermott

Linda McDermott