THIS IS A CAPITAL CASE-EXECUTION SET FOR SEPTEMBER 24, 2024

Case No. 24A_____
(CONNECTED CASE 24____)

IN THE
SUPREME COURT OF THE UNITED STATES

MARCELLUS WILLIAMS, Petitioner,

v.

DAVID VANDERGRIFF,
Warden, Potosi Correctional Center, Respondent.

On Petition for Writ of Certiorari
to the U.S. Court of Appeals, Eighth Circuit

EMERGENCY APPLICATION FOR STAY OF EXECUTION

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To the Honorable Brett M. Kavanaugh, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Eighth Circuit:

The State of Missouri has scheduled the execution of Marcellus Williams for **September 24, 2024**, **at 6:00 p.m., central time**. Mr. Williams respectfully requests a stay of execution pending consideration and disposition of the petition for a writ of certiorari, concurrently filed with this Court.

PROCEDURAL BACKGROUND

Mr. Williams was convicted and sentenced to death in the Circuit Court of St. Louis County in August 2001 for the murder of Ms. Felicia Gayle. But from the moment law enforcement developed Mr. Williams as a suspect, there were significant holes in the case against him. Although the perpetrator left behind a plethora of forensic evidence at the crime scene, including normal hairs, pubic hairs, shoeprints, fingerprints, and DNA evidence under Ms. Gayle's nails, Mr. Williams was not the source of any of that forensic evidence. The State's case was built on the testimony of two incentivized witnesses whose stories of how Mr. Williams supposedly confessed to them conflicted with each other and with the crime scene evidence. The only physical piece of evidence that tied Mr. Williams to the crime was a laptop computer stolen from the victim's house, which he pawned to a neighbor—but that neighbor affirmed that Mr. Williams had said the laptop belonged to his girlfriend and that she had asked him to pawn it for her. The trial court prohibited the neighbor from testifying about this and the jury never heard the full circumstances of the

transaction. Mr. Williams' conviction and death sentence have always stood on shaky evidence.

Just as troubling as the lack of evidence against Mr. Williams (and the problems with the trial evidence) are the St. Louis County Prosecuting Attorney's Office's actions in securing Mr. Williams' conviction and sentence. Of the seven Black venirepersons,[1] the trial prosecutor used peremptory strikes against six of them. His reasoning for excluding one of those venirepersons, Venireperson 64, was that he "reminded" him of Mr. Williams. He thought the men looked similar and that both had "piercing eyes." App. 89a. On direct appeal, the Supreme Court of Missouri found that reasoning to be race-neutral. *State v. Williams*, 97 S.W.3d 462, 471-72 (Mo. banc 2003).

Twenty-three years later, the St. Louis County Prosecuting Attorney's Office, the very same office that once brought capital charges against Mr. Williams, admitted to committing constitutional violations during Mr. Williams' trial. Among those conceded errors was that the office had committed violations of *Batson v. Kentucky*, 476 U.S. 79 (1986). [2] To remedy those errors and correct what the office now believes to be a wrongful conviction and sentence, Prosecuting Attorney Wesley Bell filed a

[1] There were 131 venirepersons total.

[2] The Prosecuting Attorney also conceded to mishandling the evidence in violation of *Arizona v. Youngblood*, 488 U.S. 51 (1988), after it was revealed that the DNA found on the murder weapon lodged in the victim's neck was consistent with the DNA profiles of the trial prosecutor and the trial investigator, both of whom admitted to handling the knife before and during trial without wearing gloves or using other evidence-saving techniques.

Motion to Vacate Mr. Williams' judgment under Section 547.031 RSMo Supp. (2021) on January 26, 2024.[3]

Astonishingly, at the evidentiary hearing on the Motion to Vacate held in the Circuit Court of St. Louis Count on August 28, 2024, the trial prosecutor, on the stand and testifying under an adversarial process for the first time in this case's history, admitted that he had struck Venireperson 64 because like Mr. Williams, Venireperson 64 was Black. He proclaimed that "part of the reason" for his peremptory strike was because the Venireperson 64, a Black man, looked like Mr. Williams, also a Black man, and that the venireperson's race was not "necessarily the full reason" he thought the venireperson and Mr. Williams looked so similar. He also declared that Venireperson 64 and Mr. Williams "looked like they were brothers."

The circuit court denied Mr. Williams' Motion to Vacate on September 12, 2024. Pursuant to § 547.031.4, the Prosecuting Attorney filed a notice of appeal in the Supreme Court of Missouri. The court set oral argument for September 23, 2024. Issues the Prosecuting Attorney presents in the appeal include an *Arizona v. Youngblood* claim based on the St. Louis County Prosecuting Attorney's office having mishandled the murder weapon, a claim of *Batson* violations, and a due process claim relating to the circuit court giving only two hours to the Prosecuting Attorney and two hours to Mr. Williams to present evidence at the hearing on the Motion to Vacate.

[3] Pursuant to this recently enacted statute, a prosecuting "may file a motion to vacate or set aside the judgment at any time if he or she has information that the convicted person may be innocent or may have been erroneously convicted." § 547.031.1.

Based on the newly-discovered evidence from the trial prosecutor's testimony, Mr. Williams filed a Motion for Relief from Judgment under Fed. R. Civ. P. 60(b)(6) in the United States District Court for the Eastern District of Missouri on September 17, 2024. Mr. Williams requested the district court reopen its 2010 denial of his habeas corpus petition, consider his habeas claim pertaining to *Batson* violations in light of the trial prosecutor's new testimony, and grant Rule 60(b)(6) relief based on the extraordinary circumstances test set forth in *Buck v. Davis*, 580 U.S. 100 (2017). The district court denied the Rule 60(b)(6) motion on September 19, 2024, on the grounds that the motion was a successive habeas petition and the circuit court of appeals had not granted authorization to file a successive petition.

Addressing very few of Mr. William's arguments, the district court also found that the trial prosecutor's racially-charged statements and admissions to race-based peremptory strikes on the stand did not constitute *Batson* violations. Mr. Williams filed an Application for a Certificate of Appealability and accompanying Motion for Stay of Execution in the Eighth Circuit Court of Appeals on September 20, 2024. The Eighth Circuit denied the Certificate of Appealability and the Motion for Stay of Execution on September 21, 2024. Judge Kelly concurred in the judgment, noting that multiple issues in Mr. Williams' proceedings "are much broader in scope and call into question the fundamental fairness of Williams' proceedings." App. 2a-3a.

Mr. Williams now seeks this Court's review of whether the facts of his case, including the trial prosecutor's admission of race-based peremptory strikes, the State's characterization of the trial prosecutor's recent testimony as "contradict[ory]"

to the trial record, and the family of the victim's express opposition to his death sentence satisfy the *Buck* extraordinary circumstances standard for Rule 60(b)(6) relief. Mr. Williams also seeks this Court's review of whether the trial prosecutor's August 28, 2024 testimony, combined with the fact that the prosecution's voir dire notes are missing from the trial file, constitutes a *Batson* violation, particularly when the St. Louis County Prosecuting Attorney's Office now concedes its former agent in fact did violate *Batson*.

Mr. Williams respectfully requests that this Court stay his execution, currently scheduled for September 24, 2024, at 6:00 PM CST, so that this Court may consider these important questions surrounding the deprivation of his constitutional rights and the fundamental fairness of his trial, conviction, and death sentence.

REASONS FOR GRANTING THE STAY

A stay of execution is warranted where there is a "presence of substantial grounds upon which relief might be granted." *See Barefoot v. Estelle*, 463 U.S. 880, 895 (1983). To decide whether a stay of execution is warranted, the federal courts consider the petitioner's 1) likelihood of success on the merits, 2) the relative harm to the parties, and the 3) extent to which the prisoner has delayed his or her claims. *See Hill v. McDonough*, 547 US. 573, 584 (2006); *Nelson v. Campbell*, 541 U.S. 637, 649-50 (2004). Mr. Williams meets the relevant standards for this Court to grant a stay of execution.

I. LIKELIHOOD OF SUCCESS ON THE MERITS

The petition for writ of certiorari has a substantial likelihood of success. There is "a reasonable probability that four Members of the Court would consider the underlying issue sufficiently meritorious for the grant of certiorari" and there is "a significant possibility of reversal of the lower court's decision." *Barefoot*, 463 U.S. at 895. Mr. Williams' certiorari petition raises an "important question of federal law that has not, but should be, settled by this Court." Sup. Ct. R. 10(c).

As described in the petition for writ of certiorari, the two underlying issues presented to this Court, at their crux, are: first, whether the express admission of considering race in peremptory strikes constitutes a *Batson* violation; and second, whether concessions from the St. Louis County Prosecutor and the Missouri Attorney General that the *Batson* evidence is different now than during the trial, combined with the fact that the victim's family has staunchly opposed Mr. Williams' execution, satisfies the *Buck* extraordinary circumstances test. Mr. Williams is likely to succeed on both issues.

A. The trial prosecutor's supposed race-neutral reasons for striking Venireperson 64 were not race-neutral, and he admitted it.

As the St. Louis County Prosecuting Attorney's Office has conceded multiple times, Mr. Williams's 2001 trial was infected by pernicious racial discrimination in the use of peremptory strikes against Black prospective jurors. *See* App. 11a, 22a, 37a.

At the August 28, 2024, evidentiary hearing in the Circuit Court of St. Louis County, the trial prosecutor admitted—contrary to his self-serving *Batson* colloquy

during trial—that "part of the reason" he used a peremptory strike against a venireperson was because, like Mr. Williams, he was a Black man:

> Q. So you struck them because they were both young black men with glasses?
>
> A. Wrong. **That's part of the reason**.

App. 93a (emphasis added). This exchange came immediately after the trial prosecutor declared that the venireperson and Mr. Williams, both Black men, looked like "brothers." *Id.* He quickly tried to backpedal, blustering, "I don't mean like black people. I mean like, you got the same mother, you got the same father. You know, you're brothers . . . ." and so on. *Id.* Since Mr. Williams is Black, the only way he and the venireperson could look like brothers who share a mother and father, as the trial prosecutor testified he meant, is with an acknowledgement that both men were Black. It follows, then, that if the reason the trial prosecutor struck the venireperson was because he looked like Mr. Williams' brother, the prosecutor struck him because he was Black.

At another point, the trial prosecutor also announced:

> A. They were both young black men.
>
> Q. Okay.
>
> A. But that's not necessarily the **full reason** that I thought they were so similar."

App. 92a (emphasis added).

Although the trial prosecutor vehemently denied that he had struck the venireperson because he was Black ("Q. And part of the reason is that they were both

black? A. No. Absolutely not. Absolutely not."), he clarified that the reason was because had he done so, the case would have to be retried ("If I strike someone because they're black, under the Supreme Court of the United States Batson and other cases, then the case gets sent back for a new trial. It gets reversed if I do that."). App. 94a. In other words, his concern was less that he would be depriving the defendant of his constitutional rights to a fair jury and a fair trial (or that he would have been engaging in racism), and more that a higher court would reverse him if it thought he did something wrong.

The trial prosecutor's attempts to elaborate on why he believed the venireperson and Mr. Williams looked so similar fared little better than his express admission of basing his strikes on race. He said they were wearing similar glasses, App. 93a-94a, and they both had piercing eyes (apparently, of the 131 venirepersons, only one had piercing eyes—and he just happened to be a Black man), App. 93a. But he admitted that there were significant differences in their appearances too, including that the venireperson was wearing a shirt with an "orange dragon and Chinese or Arabic letters," (Mr. Williams was not wearing this kind of shirt), App. 94a-95a, a "large gold cross outside of his shirt" which the prosecutor thought "was ostentatious looking," (Mr. Williams was not wearing a large gold cross), App. 95a, "gray shiny pants," (Mr. Williams was not wearing gray shiny pants), and "two earrings in his left ear," (Mr. Williams was not wearing two earrings in his left ear), App. 96a. Yet, somehow to the trial prosecutor, the two men looked alike.

In short, the trial prosecutor struck Black venirepersons from Mr. Williams' jury because they were Black. He admitted such on the stand in open court on August 28, 2024.

In addition to admitting race was a factor in striking jurors, the trial prosecutor admitted he took notes during voir dire and that he saved them in the State's trial file. App. 98a. Incredibly (and suspiciously), those notes are now missing from the State's file, although the prosecutor's other notes, including from pre-trial and trial, are included in the file. App. 146a-147a. Considering the broader context, namely the intense scrutiny surrounding the St. Louis County Prosecuting Attorney's history of using peremptory strikes against Black venirepersons from the community,[4] the unexplained disappearance of the trial prosecutor's notes reflecting his thinking at the time he struck the Black veniremembers is telling. The prosecutor's true reasons for exercising peremptory strikes, and his missing voir dire notes, were in the exclusive possession of the State of Missouri and were unknown to Mr. Williams until the August 28, 2024 hearing.

This all evinces a clear violation of *Batson*, and the trial prosecutor's new testimony is clear and convincing evidence of racial animus in the jury selection process.

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[4] The intense scrutiny surrounding the St. Louis County Prosecuting Attorney's race-based strikes was particularly heightened after reversal of the McFadden cases. The Missouri Supreme Court reversed two separate convictions and death sentences after finding the St. Louis County trial prosecutor had committed *Batson* violations. *State v. McFadden*, 191 S.W.3d 648 (Mo. banc 2006); *State v. McFadden*, 216 S.W.3d 673 (Mo. 2007).

B. The St. Louis County Prosecuting Attorney's Office's concession of *Batson* violations, the Missouri Attorney General's agreement the trial prosecutor's testimony paints a different picture of his peremptory strikes than the trial colloquy, and the victim's family's strong aversion to Mr. Williams' execution meet the *Buck* extraordinary circumstances standard.

As a result of these recent admissions by the trial prosecutor, which, as the Missouri Attorney General conceded, contradicted the same prosecutor's self-serving *Batson* colloquy during Mr. Williams's 2001 trial, App. 154a ("[T]estimony from [the] § 547.031 hearing . . . contradicts the transcript of the Petitioner's original criminal trial."), Mr. Williams moved in the district court to reopen his *Batson* habeas claim pursuant to Fed. R. Civ. P. 60(b)(6) and the extraordinary circumstances test this Court set forth in *Buck v. Davis*, 580 U.S. 100 (2017). The new evidence developed at the August 28, 2024, hearing clearly and convincingly rebuts the state court's fact-finding and supports Mr. Williams' *Batson* claim. Moreover, the St. Louis County Prosecutor's Office conceded that constitutional errors, including violations under *Batson*, infected Mr. Williams's 2001 trial. *See* App. 11a, 22a, 37a.

In *Buck v. Davis*, which involved another earlier-denied Rule 60(b)(6) motion centered around racism that was infused into the trial, this Court chided the lower courts for allowing racial animus to uphold the defendant's capital conviction. The Court determined that if a defendant may have been sentenced to death "in part"[5] because of his race, "extraordinary circumstances" exist that warrant 60(b) relief. 580 U.S. at 122-26.

[5] It is worth noting that the trial prosecutor also testified that "part" of the reason, but not the "full reason," he struck a young Black venireperson was because like Mr. Williams, he was a young Black man.

Here, in Mr. Williams' case, the circumstances amount to at least the same level of extraordinariness as those present in *Buck*. Like the defendant in *Buck*, Mr. Williams' trial was tainted by racism. While in *Buck*, racism came into play regarding evidence of the defendant's "future dangerousness," in Mr. Williams' case, racism came into play when the trial prosecutor struck Black venirepersons from the jury because they were the same race as Mr. Williams and, two decades later, admitted his unconstitutional conduct. Furthermore, in addition to this overt racism, Mr. Williams' case includes even more factors that amount to extraordinary circumstances: the St. Louis County Prosecuting Attorney expressly admits it committed constitutional error; the Missouri Attorney General agrees that the new testimony presents a different evidentiary picture than the prosecutor's trial colloquy, *see* App. 154a; and most importantly, the family of the victim adamantly opposes Mr. Williams' execution. Under this Court's jurisprudence, these extraordinary circumstances warrant 60(b) relief.

As this Court has warned, "Racial bias [is] a familiar and recurring evil that, **if left unaddressed**, would risk systemic injury to the administration of justice." *Pena-Rodriguez v. Colorado,* 580 U.S. 206, 224 (2017) (emphasis added). "Permitting racial prejudice in the jury system damages both the fact and the perception of the jury's role as a vital check against the wrongful exercise of power by the State." *Id.* Furthermore, the infiltration of racial animus into a criminal trial "poisons public confidence" in the judicial process. *Davis* v. *Ayala*, 576 U. S. 257, 285 (2015). That is precisely what happened in Mr. Williams' trial.

For the reasons stated above, Mr. Williams is likely to succeed on the merits of his certiorari petition.

II. HARM TO THE PARTIES

The irreparable harm to Mr. Williams if this Court declines to grant a stay is obvious—he will be executed. "[I]rreparable harm [that] will result if a stay is not granted . . . is necessarily present in capital cases." *Wainwright v. Booker*, 473 U.S. 935, 935 n.1 (1985) (Powell, J., concurring). Judge Kelly of the Eighth Circuit agreed. App. 5a. Without this Court's intervention, Mr. Williams will be executed despite the fact that his conviction and sentence were obtained in violation of the United States Constitution, as conceded by the very same prosecutor's office that obtained that conviction and sentence, and even though the trial prosecutor admitted under oath that race was at least part of the basis for striking a Black juror.

Although Mr. Williams is poised to lose his life based on a conviction obtained through racist and unlawful means, if this Court grants a stay to review the evidence, there will be no harm to any party or to the public. The St. Louis County Prosecuting Attorney's office, representing not only the interests of St. Louis County but also the State of Missouri, certainly will suffer no harm. That office filed the Motion to Vacate and initiated proceedings on behalf of Mr. Williams to correct the constitutional violations underpinning his conviction and sentence, including this Batson violation. After the circuit court denied the Motion to Vacate, the Prosecuting Attorney appealed to the Missouri Supreme Court. The office seeks

to prevent Mr. Williams from suffering the irreparable injury of death. After presenting the Motion to Vacate and the supporting evidence at the August 28, 2024 hearing, the Prosecuting Attorney's office, representing the community from which this case originated, still acknowledges the constitutional error the office committed in 2001 in striking Black jurors on account of their race and seeks to correct Mr. Williams' wrongful conviction and sentence. A stay of execution will give time for that evidence, which the prosecutor wants heard, to be reviewed.

Likewise, the State will suffer no harm. There is no legitimate interest in carrying out an execution that circumvents federal law or in defending a capital conviction that was obtained in a racially offensive manner. Adherence to the United States Constitution and representing the people of Missouri, including the Black Missouri community whom the trial prosecutor sought to exclude in 2001, are some of the Missouri Attorney General's most fundamental duties.

More importantly, there is no harm to the family of the victim, Ms. Gayle, and the Missouri Attorney General cannot claim to have a legitimate interest in serving their interests by seeking Mr. Williams' execution. As the family has expressed to the circuit court, to the St. Louis County Prosecuting Attorney's office, to Mr. Williams' counsel, and to the Missouri Attorney General, they do not want Mr. Williams' execution to be carried out. App. 13a, 22a-23a, 37a. They expressed a wish for Mr. Williams to be sentenced to life in prison without the possibility of parole and when the St. Louis County Prosecuting Attorney and Mr. Williams reached an agreement for that to happen, expressed satisfaction with that result.

Id. Ms. Gayle's family bears no harm if this Court grants a stay of execution because they do not want an execution at all.

III. THERE HAS BEEN NO UNNECESSARY DELAY IN THE PRESENTATION OF THIS EVIDENCE.

The trial prosecutor's testimony admitting that race was a factor in the use of peremptory strikes, upon which Mr. Williams's petition is based, occurred only on August 28, 2024. Mr. Williams filed his 60(b)(6) motion in district court 20 days after the evidence was revealed, and within a week of the court's ruling on the Motion to Vacate. This can hardly be considered delay, and the only reason the hearing took place so close to Mr. Williams's scheduled execution is because of the Missouri Attorney General's dilatory tactics.

Prosecuting Attorney Wesley Bell filed the Motion to Vacate Mr. Williams' judgment on January 26, 2024. On February 5, 2024, the Missouri Attorney General filed a Notice of Intent to Oppose that Motion to Vacate. But they did not file their opposition motion until **four months later**, at which point the Missouri Supreme Court had already set Mr. Williams' execution date.

At the case management conference for the evidentiary hearing in the circuit court on July 2, 2024, the circuit court proposed holding an evidentiary hearing in mid-July. Mr. Williams immediately agreed, as did Prosecutor Bell's office. However, the Missouri Attorney General declined, saying that one of their Assistant Attorneys General had a conflict during that week. The circuit court thus scheduled an evidentiary hearing for over a month later on August 21, 2024. However, the Assistant Attorney General who had the conflict in July did not participate in, or even

attend, the August 28, 2024 evidentiary hearing. The Missouri Attorney General thus forced a monthlong delay on the hearing for no reason at all.

Mr. Williams and the parties working to correct his wrongful conviction and sentence have acted promptly and diligently in every respect. Mr. Williams applied his case to the Conviction and Incident Review Unit of Prosecutor Bell's office in August 2021, just days after § 547.031, the statute providing for such review, took effect. There was clearly no delay here. Although totally out of Mr. Williams' immediate control, Prosecutor Bell filed the Motion to Vacate Mr. Williams' judgment in January 2024, well before an execution date was ever set. Mr. Williams and Prosecutor Bell agreed to the earliest possible date for the evidentiary hearing and agreed to every other related date and complied with every deadline set by the circuit court. After the circuit court issued its findings of fact and conclusions of law denying the Motion to Vacate on Thursday, September 12, 2024, Prosecutor Bell filed a notice of appeal just two business days later, on Monday, September 16, 2024.

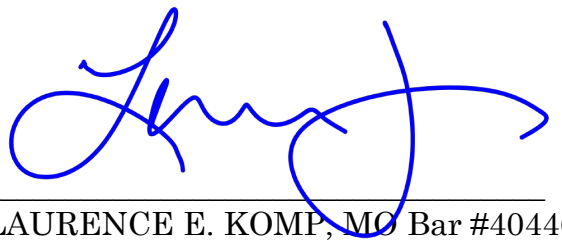
Mr. Williams filed his Rule 60(b)(6) motion in the United States District Court for the Eastern District of Missouri on September 17, 2024. The district court denied relief on September 19, 2024. Mr. Williams filed for a Certificate of Appealability the next day on September 20, 2024, in the Eighth Circuit Court of Appeals. The Eighth Circuit denied a Certificate of Appealability on September 21, 2024. Subsequently, Mr. Williams filed his petition for writ of certiorari and this accompanying motion for stay of execution on September 23, 2024.

Mr. Williams has been diligent every step of the way and in every aspect of his case. There have been no unnecessary delays in bringing this issue to this Court in a timely manner.

CONCLUSION

WHEREFORE, for all the foregoing reasons, Petitioner Marcellus Williams respectfully requests that the Court stay his execution to allow full and fair litigation of his meritorious writ of certiorari.

Respectfully Submitted,



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