Nos. 24-5606 & 24A286

In the Supreme Court of the United States

MARCELLUS WILLIAMS, Petitioner,

v.

STATE OF MISSOURI, Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI AND TO MOTION FOR STAY OF EXECUTION

ANDREW BAILEY
Attorney General

GREGORY M. GOODWIN
Chief Counsel, Public Protection
Counsel of Record
Missouri Bar #65929
P.O. Box 899
Jefferson City, MO 65102
gregory.goodwin@ago.mo.gov
(573) 751-7017

CAPITAL CASE

QUESTIONS PRESENTED

The Antiterrorism and Effective Death Penalty Act of 1996 prohibits an inmate from filing a second or successive habeas petition in district court without first obtaining permission from the Court of Appeals. Marcellus Williams, having already litigated a habeas petition, seeks to litigate a claim in federal court. To avoid the second-or-successive bar, he labeled his filing as a Rule 60(b)(6) motion. Williams did not seek permission to file a second or successive petition for habeas relief. Both the district court and court of appeals, below, found that no reasonable jurist could disagree that Williams's motion was, in fact, a second or successive petition for habeas relief, and both courts denied Williams's motion on that ground.

The questions presented are:

1. Should this court grant a petition for certiorari to review a claim in a successive habeas petition that was filed as a Rule 60(b)(6) motion, without receiving or requesting leave to file a successive petition, where the court of appeals and the district court held that it is beyond dispute that the petition is successive.
2. Is certiorari review of a meritless claim, and an associated stay, consistent with *Bucklew v. Precythe*, 587 U.S. 119 (2019), given that Williams delayed filing this petition until "just days before his scheduled execution"?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Other Authorities

STATEMENT OF THE CASE[1]

On August 11, 1998, Marcellus Williams went to University City, Missouri where he looked for a house to break into. *State v. Williams*, 97 S.W.3d 462, 466 (Mo. 2003). Williams selected Victim's home *Id*. Williams knocked out a window pane near the door, reached in and unlocked the door. *Id*. Williams went to the second floor and heard water running from Victim taking a shower. *Id*. Williams went back downstairs to the kitchen, found a butcher knife, and waited. *Id*.

When Victim came down the stairs Williams attacked, stabbing and cutting her forty-three times, inflicting seven fatal wounds. *Id*. at 466–67. Williams put on a jacket to hide the blood on his clothing. *Id*. When Williams left Victim's home, he took items including a laptop computer, its carrying case, and a purse containing a ruler with the name of a local newspaper where Victim had worked and a calculator. *Id*. at 467.

Later, Williams picked up his girlfriend ("Girlfriend"), who observed that Williams was wearing a jacket in the summer over a bloody shirt and that he had scratches on his neck. *Id*. Williams put his bloody clothing in a backpack and threw it in a sewer. *Id*. A day or two later, Williams sold the laptop to G.R.

A day later, Girlfriend found Victim's state identification card and a black coin purse in the trunk of the car that Williams drove. *Id*. Williams confessed to the

[1] Williams's statement of the case fails to recount the facts of his crime and culpability as they were found by the jury, so this Court should rely on Respondent's statement instead. *See* Rule 15.2.

murder to Girlfriend and provided details. *Id*. He grabbed her by the throat and threatened to kill her, her children, and her mother if she told anyone. *Id*.

Later, when incarcerated in jail on unrelated charges, Williams told a fellow inmate about the murder and provided details of the killing. *Id*. After he was released from jail, the man went to police and told them about the confession, providing details that were not known to the public. *Id*.

The police then went to Girlfriend and asked her about the murder. *Id*. Police found Victim's ruler and calculator in the car Williams drove and recovered Victim's laptop from G.R., to whom Williams had sold it. *Id*.

Williams filed an unsuccessful direct appeal in the Missouri Supreme Court. *State v. Williams*, 97 S.W.3d 463 (Mo. 2003). Resp't App. 2a. Then Williams filed an unsuccessful state post-conviction motion and an appeal of the denial of that motion. *Williams v. State*, 168 S.W.3d 433 (Mo. 2005). Resp't App. 2a. Next, Williams filed a federal habeas petition, in which the appeal was decided in *Williams v. Roper*, 695 F.3d 825 (8th Cir. 2012). Williams litigated an unsuccessful state habeas corpus petition in 2015 that caused his scheduled 2015 execution date to be vacated. Resp't App. 2a. Facing a scheduled 2017 execution date, Williams filed another unsuccessful state habeas corpus action in 2017. Resp't App. 2a–3a.

But on August 22, 2017, Williams's execution was stayed when now-former Missouri Governor Eric R. Greitens issued Executive Order 17-20, staying the execution until such time as Missouri's governor could make a final determination on clemency and appointing a board of inquiry. Resp't App. 3a. The board of inquiry was

charged with collecting and considering evidence in relation to Williams's assertion of innocence.

In 2023, Missouri's current Governor, Michael L. Parson, issued Executive Order 23-06, lifting the stay and dissolving the board of inquiry. Resp't App. 4a. On June 30, 2023, the Attorney General filed a renewed motion to set Williams's execution date in the Supreme Court of Missouri. Resp't App. 116a. On August 23, 2023, Williams filed a petition for declaratory judgment against Governor Parson and the Attorney General in the Circuit Court of Cole County. Resp't App. 117a. After the Cole County Circuit Court denied Governor Parson's motion for judgment on the pleadings, Governor Parson sought a permanent writ of prohibition or, in the alternative, a permanent writ of mandamus from the Missouri Supreme Court directing the circuit judge to grant the motion for judgment on the pleadings. Resp't App. 117a. After briefing and argument, the Missouri Supreme Court made its preliminary writ of prohibition permanent on June 4, 2024, and directed the circuit judge to grant Governor Parson's motion for judgment on the pleadings. Resp't App. 117a.

On January 26, 2024, the St. Louis County Prosecuting Attorney filed a motion under Missouri Revised Statute § 547.031, to vacate Williams's first-degree murder conviction and death sentence. Resp't App. 117a. That motion raised four claims on behalf of Williams: (1) that Williams "may be" actually innocent of the first-degree murder, Resp't App. 70a–77a; (2) that Williams's trial counsel provided ineffective assistance in failing to better impeach two witnesses for the State who testified that

Williams confessed to them, Resp't App. 77a–84a; (3) that Williams's trial counsel provided ineffective assistance in failing to present different mitigating evidence "contextualizing" Williams's "troubled background," Resp't App. 85a–94a; and (4) that the State committed *Batson*[2] violations by allegedly exercising peremptory strikes of Venirepersons 64 and 65 on the basis of race. Resp't App. 94a–103a. Williams then moved to withdraw the Court's execution warrant, and, in denying that motion, the Missouri Supreme Court stated that it had already considered and rejected the four claims that the St. Louis County Prosecuting Attorney had asserted in the § 547.031 motion. Resp't App. 117a; *Missouri v. Williams* SC83934, 2024 WL 3402597, slip op. *3 n.3 (Jul. 12, 2024) (*Williams V*). In doing so, the Missouri Supreme Court specifically stated:

> This Court is aware the circuit court scheduled Prosecutor's motion for an August 21, 2024, evidentiary hearing. This Court is equally aware Prosecutor's motion is based on claims this Court previously rejected in Williams' unsuccessful direct appeal, unsuccessful Rule 29.15 motion for postconviction relief, and his unsuccessful petitions for a writ of habeas corpus. Moreover, there is no allegation additional DNA testing has been conducted since the master oversaw DNA testing and this Court denied Williams' habeas petitions.

Williams V, 2024 WL 3402597 at *3, n.3.

On June 5, 2024, Respondent filed a motion to dismiss the St. Louis County Prosecuting Attorney's § 547.031 motion to vacate or set aside. Resp't App. 19a. On June 26, 2024, the St. Louis County Prosecuting Attorney filed a motion to strike the State's motion to dismiss. Resp't App. 19a. On July 2, 2024, the circuit court held a

[2] *Batson v. Kentucky*, 476 U.S. 79 (1986).

scheduling hearing and set a one-day hearing for August 21, 2024. Resp't App. 28a–29a, 107a–109a. At that time, the circuit court ordered both the State's motion to dismiss and the St. Louis County Prosecuting Attorney's motion to strike be taken with the case. Resp't App. 108a. On the same day, the circuit court also entered a scheduling order setting dates for discovery and pre-hearing proceedings. Resp't App. 28a–29a, 107a–109a. The scheduling order was agreed to by the parties. Resp't App. 109a. On the date on which the evidentiary hearing was originally scheduled, August 21, 2024, the St. Louis County Prosecuting Attorney and Williams entered into what purported to be a consent judgment vacating Williams's first-degree murder conviction and death sentence. Resp't App. 118a; Pet. App. 15a–23a. Under that purported consent judgment, Williams agreed to enter, and subsequently entered, an *Alford*[3] plea to first-degree murder in exchange for a sentence of life without parole. Pet. App. 15a–44a. Williams's other convictions were left unaffected. *Id*. The State objected in the circuit court, Pet. App. 29a–36a, and, after the objection was overruled, sought a writ of prohibition from the Missouri Supreme Court. That court issued a preliminary writ of prohibition directing the circuit court to vacate the consent decree and *Alford* plea, and to, among other things, hold the previously scheduled evidentiary hearing in this matter or file a return explaining why the Missouri Supreme Court should not issue a permanent writ. Preliminary Writ, *State ex rel. Bailey v. Hilton*, SC100707 (Mo. Aug. 21, 2024); Resp't App. 118a.

[3] *North Carolina v. Alford*, 400 U.S. 25 (1970).

On August 22, 2024, the circuit court vacated the consent judgment and rescheduled the evidentiary hearing for August 28, 2024. Resp't App. 118a. Immediately before the hearing, Williams was permitted to amend motion to add a fifth claim. On August 28, 2024, the circuit court held an evidentiary hearing, at which it accepted thousands of pages of exhibits and received live testimony from six witnesses. *See* Resp't App. 119a–122a; *see also* Resp't App. 138a–148a. On September 12, 2024, the circuit court entered a judgment denying all five claims included in the motion to vacate filed on behalf of Williams, including the *Batson* claim Williams raises here. *See* Resp't App. 108a–131a.

On September 17, 2024, Williams filed a motion in the United States District Court for the Eastern District of Missouri, alleging that "new evidence clearly and convincingly rebuts the [Missouri Supreme Court]'s fact-finding[,]" from 2003 on the very same issue. Petitioner's Motion for Relief from a Judgment & Order Pursuant to Fed. R. Civ. P. 60(b) at 3, *Williams v. Vandergriff*, 4:05-CV-1474-RWS (E.D. Mo. Sep. 17, 2024). The district court below "den[ied] Williams' motion because it is a successive habeas petition" which the court below found it could not "entertain absent permission from the United States Court of Appeals for the Eighth Circuit." Pet. App. 2a. Alternatively, the district court found that Williams's "motion fails to establish grounds for relief under Rule 60(b)(6)." Pet. App. 2a. Undeterred by the district court's findings, including that the motion was, in fact, a second or successive petition for habeas corpus relief, Williams filed a notice of appeal in the United States Court of Appeals for the Eighth Circuit based on the district court's denial. Respondent filed

a motion to dismiss Williams's appeal as an unauthorized second or successive petition for habeas relief.

SUMMARY OF THE ARGUMENT

The United States District Court for the Eastern District of Missouri and the United States Court of Appeals for the Eighth Circuit determined that the motion contained a claim that had already been denied on its merits, and that this was beyond debate by reasonable jurists. Williams ignores this and argues there is an extraordinary reason for granting the Rule 60(b)(6) motion. But the motion cannot be granted because it is unquestionably a second or successive habeas petition for which petitioner has not received leave to file. This Court should not go beyond that analysis. Although there is no real extraordinary reason for granting a Rule 60(b)(6) motion, this Court cannot reach that determination because Williams's motion is actually a second or successive habeas petition, and AEDPA does not permit this Court to grant petitioners leave to file second or successive habeas petitions.

REASONS FOR DENYING THE PETITION

I. This Court cannot reach the merits of Williams's claim, as Williams's petition is procedurally improper.

Williams's petition presents an exceptionally poor vehicle for addressing the questions presented because it has not been properly presented; because the extraordinary standard of *Buck*, even if applicable, has not been met; and because Williams has constructed and executed a strategy of extreme delay of bringing this petition.

A. This is an unauthorized second or successive petition for habeas corpus relief.

The district court found that Williams's Rule 60(b)(6) motion was actually "a successive habeas petition which [it could not] entertain absent permission from the United States Court of Appeals for the Eighth Circuit." Pet. App. 2a. The district court was correct. *See Gonzalez v. Crosby*, 545 U.S. 524, 531–32 (2005). Because Williams's 60(b)(6) motion only sought to revisit a claim the district court had already denied on the merits, he must first obtain permission from the Court of Appeals before proceeding with his successive petition. 28 U.S.C. § 2244(b)(3)(A); *United States v. Lambros*, 404 F.3d 1034, 1036 (8th Cir. 2005); *see also DeCaro v. United States*, 593 F. App'x 605 (8th Cir. 2015). AEDPA does not permit this Court to grant inmates leave to file second or successive habeas petitions. 28 U.S.C. § 2244(b)(3). In fact, the Court of Appeals' determination "shall not be appealable and shall not be the subject of a petition for rehearing or for a writ of certiorari." 28 U.S.C. § 2244(b)(3)(E).

Williams's motion for stay is connected to his application for a certificate of appealability as to his Rule 60(b)(6) motion, which the district court ruled to be a successive petition for habeas relief. This Court's jurisdiction depends on whether Williams filed a Rule 60(b)(6) motion or a second or successive habeas petition. Every judge to consider that question has unanimously agreed: Williams filed a second or successive habeas petition. Therefore, this Court may not grant Williams's petition for certiorari. 28 U.S.C. § 2244(b)(3)(E).

Williams's, however, has argued that he truly filed a Rule 60(b) motion. In order to obtain a certificate of appealability, Williams must make "a substantial showing of the denial of a constitutional right" or his appeal should be dismissed. 28 U.S.C. § 2244(b)(3)(A); *Lambros*, 404 F.3d at 1036; *DeCaro*, 593 F. App'x 605. Because Williams's Rule 60(b)(6) motion was actually a successive request for habeas relief, the district court properly denied it because Williams did not have authorization from the Court of Appeals to file it. *Id.* at 1037. As a result, Williams cannot make "a substantial showing of any error, much less constitutional error," so this Court should deny the request for a certificate of appealability, deny the request for a stay, and dismiss the petition for certiorari. *Id.*; *Boyd v. United States*, 304 F.3d 813, 814 (8th Cir. 2002). That ends the analysis.

B. The extraordinary relief standard in *Buck* does not apply.

Williams's argument next turns to *Buck v. Davis*, 580 U.S. 100 (2017). Leaving aside that Williams filed a second or successive habeas petition and this Court should go no further, *Buck* is entirely different from Williams's case. Williams has presented nothing more than a garden variety *Batson* claim. In *Buck*, the defense attorney—who was representing a black defendant—presented an expert who testified that blacks are more likely to be dangerous in the future than whites. *Buck*, 580 U.S. at 119. Nothing more needs to be said to show why this case bears no similarities to *Buck*.

Insofar as Williams argues that § 2254(e)(1) somehow changes *Gonzalez*'s teaching that his claim is second or successive, that argument is unavailing. *First*,

the district court has already found that Williams's "new" evidence in support of his claim was a "mischaracterization" of the record below. Pet. App. 10a. And, that the evidence does not even support an inference of that the race of the venireperson was even one reason for striking him. *Second*, *Gonzalez* specifically considered circumstances in which the petitioner asserts he has "new evidence in support of a claim already litigated[,]" *Gonzalez*, 545 U.S. at 531, and found that such an argument triggers the second or successive bar. *Id.* at 531–32. While Williams's claim that he can unseat the state court's factual claim under §2254(e)(1) is meritless, even if it were not he cannot avoid second or successive bar simply by arguing he has new evidence (which is not new or supportive of his claim). *See Gonzalez*, 545 U.S. at 531–32.

C. Williams unreasonably delayed in bringing this petition.

"Both the State and the victims of crime have an important interest in the timely enforcement of a sentence." *Bucklew v. Precythe*, 587 U.S. 119, 149 (2019) (quoting *Hill v. McDonough*, 547 U.S. 573, 584 (2006)). "Those interests have been frustrated in this case." *Id.* Williams committed his crimes more than two decades ago. *Williams I*, 97 S.W.3d at 466. He has exhausted nearly every state and federal avenue for review, some more than once. And each and every time, Williams's claims have been found to be meritless. In short, Williams "has managed to secure delay through lawsuit after lawsuit." *Bucklew*, 1587 U.S. at 149.

Now, at the eleventh hour, Williams has filed this petition seeking certiorari review and an equitable, emergency stay. But Williams's attempts to manufacture an

emergency through dilatory tactics cautions against this Court granting certiorari to review his questions presented. Indeed, the testimony upon which Williams now claims he relies was given on August 28, 2024. At that time, Williams knew of the Missouri Supreme Court order and warrant setting his execution date as September 24, 2024, and had twenty-seven days to act upon it. Nevertheless, Williams delayed for twenty days before finally filing his motion in the district court below on September 17, 2024. Even when Williams finally did file his motion, he did so under the wrong procedural provision. Rather than file a request to file a second or successive habeas petition in the United States Court of Appeals for the Eighth Circuit, Williams filed a motion ostensibly pursuant to Federal Rule of Civil Procedure 60(b)(6).

Williams's delay is unreasonable, and "[t]he people of Missouri, the surviving victims of [Williams's] crimes, and others like them deserve better." *Bucklew*, 1587 U.S. at 149. This Court should deny the petition for a writ of certiorari to prevent Williams from benefitting from a strategy centered on unwarranted an unjust delay.

II. Williams cannot make a substantial showing of the denial of his constitutional rights.

On review of an application for a certificate of appealability, the Court looks to whether reasonable jurists could disagree with the district court's application of AEDPA, not to the merits of the underlying claims. *Miller-El*, 537 U.S. at 336. In other words, to receive a certificate of appealability, Williams must show that reasonable jurists could disagree with the district court's conclusion that the Missouri Supreme Court's decision was not unreasonable. *Id.* All Williams is really doing is

arguing that the Missouri Supreme Court's decision was wrong based on the prosecutor's recent testimony. But, under AEDPA, federal courts must decide whether the decision is unreasonable; a wrong decision is not automatically unreasonable, not even "clear error will suffice." *White v. Woodall*, 572 U.S. 415, 419 (2014).

Williams merely attempts to revive a long-denied *Batson* claim with allegations that he has new evidence that the trial prosecuting attorney struck Venireperson 64 for non-race-neutral reasons. The Missouri Supreme Court considered the *Batson* claim and denied it. Williams did not receive federal habeas relief from this Court on this claim or on any other claim. Now, he merely seeks to raise the exact same claim based on mischaracterized portions of the trial prosecuting attorney's testimony during the August 2024 hearing. But every court to consider that claim has found that the prosecuting attorney did not say what Williams alleges. His has presented no reason—not now and not years—for this Court to find that the Missouri Supreme Court's decision was unreasonable. And he cannot show, as he must to succeed, that the federal court's decision on this issue was unreasonable. *White*, 572 U.S. at 419. Given all of this, Williams cannot show that jurists of reason would find the district court's adjudication of the claim to be debatable. *Miller-El*, 537 U.S. at 336.

III. Even if this Court were to evaluate Williams's *Batson* claim, Williams's claim is meritless.

In evaluating the testimony upon which Williams's claim relies, the Circuit Court of St. Louis County, Missouri, when ruling on the § 547.031 motion brought on

Williams's behalf, denied the same *Batson* claim. That court found: "[Prosecutor] denied systematically striking Black jurors or asking Black jurors more isolating questions than White jurors." Resp't App. 123a.

Even if this Court were to look beyond the factual findings made by the circuit court below, the transcript from the underlying evidentiary hearing refutes the idea that Prosecutor had non-race-neutral reasons for any of his peremptory strikes. *See* Resp't App. 334a–368a. The United States District Court for the Eastern District of Missouri, below, rejected the *Batson* claim based on the transcript of the motion to vacate hearing. Pet. App. 10a. The United States District Court found that asserting that one of the reasons that the prosecutor struck one of the potential jurors was because the person was black was a "mischaracterization" of the prosecutor's testimony. *Id.* The court then held that the prosecutor's testimony does not support the inference that the race of the potential juror was "'one reason' for striking him." *Id.*

Indeed, Prosecutor explicitly *denied* striking Venireperson 64 in part because he was black, stating that he struck this potential juror in part because he thought Williams and this potential juror looked similar, but not because he was black. Resp't App. 342a. When asked specifically if *part of the reason* he struck this potential juror was because he and Williams were both black, Prosecutor stated "*No. Absolutely not. Absolutely not.* 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." Pet. App. 94a (emphasis added).[4] This Court should deny the petition for the writ of certiorari.

REASONS FOR DENYING THE APPLICATION FOR STAY OF EXECUTION

"[A] stay of execution is an equitable remedy. It is not available as a matter of right, and equity must be sensitive to the State's strong interest in enforcing its criminal judgments without undue interference from the federal courts." *Hill v. McDonough*, 547 U.S. 573, 584 (2006). A request for a stay of execution must meet the standard required for all other stay applications. *Id.* "Under that standard, a court considers four factors: '(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.'" *Nken v. Holder*, 556 U.S. 418, 425–26 (2009) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)).

"Given the State's significant interest in enforcing its criminal judgments, there is a strong equitable presumption against the grant of a stay where a claim could have been brought at such a time as to allow consideration of the merits without requiring entry of a stay." *Nelson v. Campbell*, 541 U.S. 637, 650 (2004); *see also, e.g.*, *Gomez v. U.S. Dist. Ct. for N. Dist. of Cal.*, 503 U.S. 653, 654 (1992) (per curiam)

[4] Williams's examination of the Prosecutor at the evidentiary hearing, in relation to the *Batson* claim, largely consisted of Williams's counsel reading small portions of the trial transcript out of context, *see, e.g.*, Resp't App. 344a–345a, and making overheated rhetorical statements. *See* Resp't App. 368a.

(holding that the "last-minute nature of an application" may be grounds for denial of a stay). Indeed, "an inmate is not entitled to a stay of execution as a matter of course." *Hill*, 547 U.S. at 583–84. This is because "both the State and crime victims have an important interest in the timely enforcement of a sentence." *Id.* at 584. Belated motions for stay are not favored because they offend the State's and the victims' rights to final disposition of criminal judgments. *Bucklew*, 587 U.S. at 149.

I. Petitioner is not likely to succeed on the merits of his petition.

Here, Petitioner has not demonstrated any probability that this Court will grant a writ of certiorari, let alone a fair prospect that he would win on the merits. Here, the alleged point of a stay would be to allow Williams to litigate an alleged meritorious challenge to his judgment of conviction and sentence. The alleged harm from denying a stay would be that Williams could not litigate those allegedly meritorious claim. But, as discussed above, Williams has no meritorious claim. The only effect of a stay would be further delay in case that has already been delayed many years through Williams' litigation of meritless claims. There is no, and can be no, debate among reasonable jurists that Williams's so-called Rule 60(b)(6) motion is really a second or successive petition for habeas corpus relief. In fact, every judge to consider the matter has agreed: it is really a second or successive habeas petition. Williams has not shown a likelihood of success on the merits of his petition.

II. The other factors do not weigh in favor of a stay.

The remaining factors require this Court to evaluate: "(2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay

will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Hilton*, 481 U.S. at 776.

A stay would irreparably harm both the State and Williams's victims. On the other hand, Williams will not be irreparably harmed absent the stay. Williams has no right to raise meritless claims to delay the execution of his sentence. He suffers no harm, then, when he is not given a delay to which he is not entitled. This Court has repeatedly recognized the States' important interests in enforcing lawful criminal judgments without federal interference. "The power to convict and punish criminals lies at the heart of the States' 'residuary and inviolable sovereignty.'" *Shinn v. Ramirez,* 596 U.S. 366, 376 (2022) (quoting The Federalist No. 39, p. 245 (J. Madison) (Clinton Rossiter ed. 1961)); *see also Gamble v. United States*, 587 U.S. 678, 688–90 (2019). "Thus, [t]he States possess primary authority for defining and enforcing the criminal law and for adjudicating constitutional challenges to state convictions." *Id.* (quotations and citations omitted). Federal intervention "disturbs the State's significant interest in repose for concluded litigation," and it "undermines the States' investment in their criminal trials." *Id.* at 377 (quotations and citations omitted). "Only with real finality can the victims of crime move forward knowing the moral judgment will be carried out."[5] *Id.* at 376 (quoting *Calderon v. Thompson*, 523 U.S.

[5] Williams claims that staying his execution will achieve finality. Not so. Through his attorneys, he has promised to continue to litigate his convictions no matter what. Innocence Project, *Breaking Attorney Statement: Agreement Reached to Ensure Marcellus Williams Is Not Executed* (Aug. 21, 2024) https://innocenceproject.org/breaking-attorney-statement-agreement-reached-to-ensure-marcellus-williams-is-not-executed/.

538, 556 (1998)). "To unsettle these expectations is to inflict a profound injury to the powerful and legitimate interest in punishing the guilty, an interest shared by the State and the victims of crime alike." *Id.* at 376–77 (quoting *Calderon*, 523 U.S. at 556). As a result, the public interest weighs in favor of denying the stay. The remaining factors do not weigh in favor of granting Williams a stay.

It is not irreparable harm by any reasonable definition that Williams is not allowed to delay the execution of his sentence by continuously presenting meritless claims. In contrast, the State of Missouri, crime victims, for whom the case goes on for decades without resolution, and the criminal justice system are all harmed by endless litigation of meritless claims. *See Bucklew*, 587 U.S. at 149–50 (noting that the State and crime victims have an important interest in timely enforcement of a sentence and that the people of Missouri and crime victims deserve better than the excessive delays that now routinely occur before the enforcement of a death sentence); *see also Wainwright v. Sykes*, 433 U.S. 72, 90 (1977) (noting the criminal trial should be the main event in a criminal case rather than a tryout on the road for later litigation). This is especially true when, as here, the vast majority of a petitioner's meritless claims have already been rejected by this Court, via denials of certiorari, and by every other court to consider this claim before the current litigation. This real and concreate harm far outweighs any alleged injury to Williams from not being allowed to delay execution of his sentence through meritless litigation.

III. Williams unreasonably delayed in bringing this petition.

In considering Williams's request, this Court must apply "a strong equitable presumption against the grant of a stay where a claim could have been brought at

such a time as to allow consideration of the merits without requiring entry of a stay." *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987) (citing *Nelson,* 541 U.S. at 650). "[L]ate-breaking changes in position, last-minute claims arising from long-known facts, and other 'attempts at manipulation' can provide a sound basis for denying equitable relief in capital cases." *Ramirez v. Collier,* 595 U.S. 411, 434 (2022) (citing *Gomez v. U.S. Dist. Ct. for N. Dist. Of Cal.,* 503 U.S. 653, 654 (1992)). The "last-minute nature of an application" may be reason enough to deny a stay. *Id.*

Williams's claims of timely diligence are a mischaracterization of the record. While the Prosecuting Attorney's Office did file their motion to vacate, pursuant to § 547.031, on January 26, 2024, the motion was filed six months after Missouri Governor Parson lifted the stay on Williams's execution on June 29, 2023. Executive Order 23-06. Under the statute, a prosecuting attorney may bring a freestanding innocence claim or a claim of constitutional error on behalf of a criminal defendant. The statute requires the prosecuting attorney to prove the merits of these claims by clear and convincing evidence at an evidentiary hearing in order for the criminal defendant to secure relief. Therefore, in a § 547.031 proceeding, the prosecuting attorney and the criminal defendant are in privity, with the prosecuting attorney being given representational capacity to press the defendant's claims. Thus, the Prosecuting Attorney's delay in the underlying action *is* Williams's delay and *vice versa*. Williams's recent actions in state court further confirm this understanding. When the St. Louis County Prosecuting Attorney's appeal was heard in the Missouri Supreme Court, Williams's counsel appeared and gave the argument. Oral Argument,

Prosecuting Attorney, 21st Judicial Circuit ex rel. Marcellus Williams v. State, SC100764 (Mo. Sept. 23, 2024), available at https://www.courts.mo.gov/SupremeCourtVideo/SCaudio/SC100764.mp3.

After the Prosecuting Attorney's Office filed their motion to vacate on January 26, 2024, the Prosecuting Attorney did not file the exhibits in support of their petition until four days later, on January 30, 2024.[6] The case was, then, assigned to the state trial court on February 1, 2024, and the State filed a notice of intent to oppose the Prosecuting Attorney's motion on February 5, 2024. After being made aware of the State's position, both the Prosecuting Attorney and Williams, then, let the case lie entirely dormant for a span of several months. Indeed, the next activity in the case came only when the State filed a motion to dismiss the suit on June 5, 2024, just one calendar day after the Missouri Supreme Court issued its order and warrant of execution in Williams's direct appeal, setting the September 24, 2024, execution date. *State v. Williams*, SC83934 (Mo. Jun. 4, 2024). Even then, both the Prosecuting Attorney and Williams failed to file anything further in the case until June 26, 2024, when the Prosecuting Attorney filed a motion to strike the State's motion to dismiss.

After a case management conference on July 2, 2024, the parties agreed to a scheduling order, which included allowing both sides to conduct civil discovery during the month of July. It should come as no surprise, then, that the State was unable to

[6] This may not be entirely surprising, since the investigator assigned to the Prosecuting Attorney's Conviction and Incident Review Unit testified at the evidentiary hearing in the underlying matter that the Unit did not come into possession of the Prosecuting Attorney's Office's own file regarding Williams's case until February of 2024, after the motion was filed. Resp't App. 397a–398a.

proceed to hearing in July, when written discovery responses were due to be returned as late as July 22, 2024, and requests for admissions were not due to be answered until August 16, 2024.

On the day of the scheduled evidentiary hearing, August 21, 2024, Williams and the Prosecuting Attorney were not prepared to put on evidence regarding the § 547.031 motion. Instead, Williams and the Prosecuting Attorney purported to enter into an unauthorized "consent judgment" vacating Williams's first-degree murder conviction and death sentence. Under that "consent judgment," Williams entered a plea, pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970), to first-degree murder, in exchange for a sentence of life without parole. The State was forced to seek an immediate writ of prohibition from the Missouri Supreme Court, which was granted in the late evening hours of August 21, 2024. On August 22, 2024, the circuit court vacated the consent judgment and rescheduled the evidentiary hearing for August 28, 2024. After Williams's unauthorized dilatory tactics forced the seven-calendar-day-delay, the parties were finally able to conduct the evidentiary hearing on the Prosecuting Attorney's Mo. Rev. Stat. § 547.031 motion on August 28, 2024.

On Thursday, September 12, 2024, the Circuit Court of St. Louis County denied the Prosecuting Attorney's Mo. Rev. Stat. § 547.031 motion. With less than twelve calendar days until Williams's scheduled execution, Williams and the Prosecuting Attorney then delayed an additional four calendar days before filing a notice of appeal in the case on Monday, September 16, 2024.

A mere seven calendar days before Williams's scheduled execution, Williams filed the underlying second or successive habeas petition (denominated as Rule 60(b)(6) motion) in district court. Purportedly relying on twenty-day-old evidence, Williams's present claim is a mere re-hashing of a claim that the federal district court has previously denied on its merits. Moreover, Williams does not, and cannot, explain how the evidence he now seeks to rely on, recent testimony from the prosecutor who conducted his criminal trial, which took place almost twenty-five years ago, was somehow not previously discoverable in the long history of litigation Williams has brought challenging his convictions, spanning nearly the entirety of that twenty-five-year gap.

At bottom, Williams could have presented his claims in a more timely fashion. That is a sufficient reason to deny his request for a stay. This Court should deny the application for stay of execution.

CONCLUSION

This Court should deny the petition for a writ of certiorari. This Court should also deny the application for a stay of execution.

Respectfully submitted,

ANDREW BAILEY
Attorney General for the State of Missouri

MICHAEL J. SPILLANE
Assistant Attorney General

SHAUN J. MACKELPRANG
Deputy Attorney General, Criminal

/S/ *GREGORY M. GOODWIN*
GREGORY M. GOODWIN
Chief Counsel, Public Protection Section
Counsel of Record

ANDREW J. CLARKE
Assistant Attorney General

KIRSTEN PRYDE
Assistant Attorney General

KATHERINE GRIESBACH
Assistant Attorney General

207 West High Street
P.O. Box 899
Jefferson City, MO 65102
mike.spillane@ago.mo.gov
(573) 751-1307

Attorneys for Respondent