No. 24A124

IN THE

Supreme Court of the United States

ARTHUR LEE BURTON,
Petitioner,

v.

STATE OF TEXAS
Respondent.

On Petition for Writ of Certiorari to the
Texas Court of Criminal Appeals

RESPONDENT'S OPPOSITION TO APPLICATION FOR STAY

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REPONSE IN OPPOSITION
TO APPLICATION FOR STAY

Arthur Burton is **scheduled to be executed after 6:00 p.m. on August 7, 2024.** He was convicted and sentenced to death for the July 29, 1997 kidnapping, aggravated sexual assault, and strangulation of Nancy Adleman. Burton unsuccessfully appealed his conviction and sentence in state and federal court, with federal litigation ending in June 2014. *See Burton v. Stephens,* 573 U.S. 909 (2014). More than ten years later and only eight days before his scheduled execution date, Burton filed a subsequent habeas corpus application in the state court, raising four claims for relief. The Texas Court of Criminal Appeals (CCA) dismissed the subsequent application, without waiting for response from the State, concluding "the application does not satisfy the requirements of [Texas Code of Criminal Procedure] Article 11.071, Section 5. Therefore, we dismiss the application as an abuse of the writ. *See* Art. 11.071, § 5(c)." *Ex parte Burton,* No. 64,360-03, Order at *3 (Tex. Crim. App. Aug. 1, 2024) (unpublished). The CCA also denied Burton's motion for stay of execution.

Burton now seeks certiorari review of only one claim—the CCA's dismissal of his claim alleging the Eighth Amendment prohibits Texas from executing him because he is a person with intellectual disability, and concurrently files the instant application for stay of his execution pending the

outcome of his petition for writ of certiorari. However, as argued in the concurrently filed brief in opposition, Burton is unable to present any special or important reason for certiorari review because he fails to demonstrate a violation of any federal constitutional right. Therefore, the Court should deny his petition for certiorari review and deny this application for stay of execution.

STANDARD OF REVIEW

Federal precedent does "not for a moment countenance 'last-minute' claims relied on to forestall an execution." *Nance v Ward*, 597 U.S. 159, 174 (2022). A stay of execution "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) (citing *Nelson v. Campbell*, 541 U.S. 637, 649–50 (2004)). "It is well-established that petitioners on death row must show a "reasonable probability" that the underlying issue is "sufficiently meritorious" to warrant a stay and that failure to grant the stay would result in "irreparable harm." *Barefoot v. Estelle*, 463 U.S. 880, 895 (1983), superseded on other grounds by 28 U.S.C. § 2253(c)(2).

To demonstrate an entitlement to a stay, a petitioner must demonstrate more than "the absence of frivolity" or "good faith" on the part of petitioner. *Id.* at 892–93. Rather, the petitioner must make a substantial showing of the denial of a federal right. *Id.* In a capital case, a court may properly consider

the nature of the penalty in deciding whether to grant a stay, but "the severity of the penalty does not in itself suffice." *Id*. at 893. The State's "powerful and legitimate interest in punishing the guilty," as well as its interest in finality, must also be considered, especially in a case such as this where the State and victims have for years borne the "significant costs of federal habeas review." *Herrera v. Collins*, 506 U.S. 390, 421 (1993) (O'Connor, J., concurring); *Calderon v. Thompson*, 523 U.S. 538, 556 (1998) (both the State and the victims of crime have an important interest in the timely enforcement of a sentence).

Thus, in deciding whether to grant a stay of execution, the Court must consider 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, 434 (2009) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)). None of these factors favor Burton's request.

ARGUMENT

I. Burton is Unlikely to Succeed on the Merits.

First, as demonstrated in the State's brief in opposition to Burton's petition for writ of certiorari, Burton's petition is without merit. He points to no compelling factual or legal issues warranting further review. The CCA

correctly dismissed his *Atkins* claim, as contained within his subsequent application, as an abuse of the writ pursuant to Texas Code of Criminal Procedure, Article 11.071, § 5, because he could not demonstrate a prima facie claim for relief. *See Ex parte Burton,* No. 64,360-03, Order at *3 (Tex. Crim. App. Aug. 1, 2024) (unpublished). The underlying claim itself is meritless. Therefore, Burton's petition is unlikely to succeed.

II. Burton Will Not be Substantially Injured.

Second, Burton will not be substantially injured. In a capital case, while a court may properly consider the nature of the penalty in deciding whether to grant a stay, "the severity of the penalty does not in itself suffice." *Barefoot*, 463 U.S. at 893.

III. A Stay Will Substantially Injure Other Parties, and the Public's Interest Lies in Seeing Sentence Carried Out.

The State, the victims, and the public have a strong interest in seeing Burton's sentence carried out. *See Hill*, 547 U.S. at 584. The public's interest lies in executing sentences duly assessed, and for which years of judicial review have failed to find reversible error. *Martel v. Clair*, 565 U.S. 648, 662 (2012) ("Protecting against abusive delay *is* an interest of justice.") (emphasis in original). The State and crime victims have a "powerful and legitimate interest in punishing the guilty." *Calderon*, 523 U.S. at 556 (citation omitted). And "[b]oth the State and the victims of crime have an important interest in the

timely enforcement of a [death] sentence." *Bucklew v. Precythe*, 587 U.S. 119, 149 (2019) (quotation omitted); *Nelson v. Campbell*, 541 U.S. 637, 650 (2004) ("a State retains a significant interest in meting out a sentence of death in a timely fashion"); *Gomez v. U.S. Dist. Court*, 503 U.S. 653, 654 (1992) (per curiam) ("[e]quity must take into consideration the State's strong interest in proceeding with its judgment").

Once postconviction proceedings "have run their course . . . finality acquires an added moral dimension." *Calderon*, 523 U.S. at 556. "Only with an assurance of real finality can the State execute its moral judgment in a case" and "the victims of crime move forward knowing the moral judgment will be carried out." *Id.* The State should be allowed to enforce its "criminal judgments without undue interference from the federal courts." *Crutsinger v. Davis*, 936 F.3d 265, 273 (5th Cir. 2019) (citations and internal quotations omitted).

Here, the public's interest lies in executing a sentence duly assessed, particularly where years of judicial review have found no reversible error, and where the petitioner has failed to utilize available time to exhaust his claims. Burton was first sentenced to death in 1998. He received a new punishment hearing and was sentenced to death again in 2002. He has already passed through state and federal collateral review, which ended ten years ago. His case has sat dormant for ten years until an execution date was set on May 1, 2024. Two and a half months later, beginning July 19, 2024, Burton engaged

in a flurry of litigation in state and federal court, in a desperate attempt to postpone his execution, raising claims that could and should have been raised sometime in the past twenty-seven years. Such dilatory tactics underscore why the court should deny this motion for stay. *See, e.g.*, *Bucklew*, 587 U.S. at 149–51. Burton presents no reason to delay his execution date any longer.

The public's interest is not advanced by postponing his execution any further, and the State opposes further delay. *Martel*, 565 U.S. at 662 ("Protecting against abusive delay *is* an interest of justice."). Nancy Adleman's family has waited twenty-seven years for justice. The Court should not further delay this execution to review a claim that could have been raised years before, and that fails to allege any violation of Burton's constitutional rights. His dilatoriness in bringing this claim should not be rewarded. *Hill*, 547 U.S. 585. ("The federal courts can and should protect States from dilatory or speculative suits[.]")

CONCLUSION

For the foregoing reasons, Burton's petition for a writ of certiorari and application for stay of execution should be denied.

Respectfully submitted,

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