

No. 24A124

IN THE
Supreme Court of the United States

ARTHUR LEE BURTON,

Petitioner,

v.

STATE OF TEXAS,

RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE TEXAS COURT OF CRIMINAL APPEALS

REPLY IN SUPPORT OF APPLICATION FOR STAY OF EXECUTION

***THIS IS A CAPITAL CASE
WITH AN EXECUTION SCHEDULE FOR
WEDNESDAY, AUGUST 7, 2024 AT 6:00 PM***

REPLY IN SUPPORT OF APPLICATION FOR STAY OF EXECUTION

In its Opposition to Mr. Burton's Application for Stay of Execution, Respondent argues that (1) Mr. Burton is unlikely to succeed on the merits; (2) Mr. Burton will not be substantially injured; and (3) a stay will substantially injure other parties and be inconsistent with the public's interests. Mr. Burton is likely to succeed on the merits, and will be substantially injured without a stay. Any delay leading up to this point should be attributed to the State, not to Mr. Burton.

Respondent cites *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983), for the astonishing proposition that Mr. Burton will not be substantially (or irreparably) injured absent a stay. *Barefoot* stands for no such proposition; instead, *Barefoot* holds that, under now-superseded habeas standards that required "a prisoner to obtain a certificate of probable cause to appeal in order to prevent frivolous appeals," *id.* at 892, "[i]n a capital case, the nature of the penalty is a proper consideration in determining whether to issue a certificate of probable cause, but the severity of the penalty does not in itself suffice to warrant the automatic issuing of the certificate." *Id.* at 893. To the extent this principle even applies to the standard for issuance of a stay, it suggests only that the severity of the penalty imposed is not an independent and automatic basis for relief, and Mr. Burton does not contend otherwise. Respondent's argument that Mr. Burton will not be irreparably harmed should he be executed prior to the adjudication, consistent with the proper legal standard, of his claim that he is categorically ineligible for the death penalty, however, is simply and unequivocally wrong. There is no harm that is more irreparable.

Finally, Respondent argues that Respondent, the victims, and the public all have an interest in seeing Mr. Burton’s execution carried out without further delay, urging the Court to consider the twenty-seven years the victim’s family has “waited for justice.” Opp. at 6. Respondent finds fault with Mr. Burton—an intellectually disabled, indigent inmate in a Texas prison who was abandoned by prior counsel—for now seeking a stay of execution for only the amount of time necessary to properly adjudicate his claim that he is ineligible for the death penalty. But to the extent any such delay is contrary to the interests of the State, the victims, and the public, Respondent offers no explanation for why Respondent itself failed to take any action in his case for ten years after Mr. Burton’s state and federal collateral review ended. Opp. at 5. Any stay granted by this Court would certainly expire in far less time than Respondent has already allowed to elapse, and Respondent’s new-found urgency to execute Mr. Burton should not trump Mr. Burton’s interests, and the interests of justice, in ensuring that Respondent does not carry out an unconstitutional execution.

For these reasons, and for the reasons set forth in Mr. Burton’s Motion for Stay of Execution and Petition for Writ of Certiorari, Mr. Burton respectfully requests that his application for stay of execution be granted.

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Dated: August 7, 2024

By /s/ Steven J. Wells
Steven J. Wells
Counsel of Record
Member, Supreme Court Bar

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