No. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2024

EDWARD THOMAS JAMES,

Petitioner,

v.

SECRETARY,
FLORIDA DEPARTMENT OF CORRECTIONS, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Eleventh Circuit

APPLICATION FOR STAY OF EXECUTION

THIS IS A CAPITAL CASE
WITH AN EXECUTION SCHEDULED FOR
THURSDAY, MARCH 20, 2025, AT 6:00 P.M.

To the Honorable Clarence Thomas, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Eleventh Circuit:

The State of Florida has scheduled the execution of Petitioner Edward Thomas James for Thursday, March 20, 2025, at 6:00 p.m. Mr. James requests a stay of execution pending the disposition of the petition for a writ of certiorari accompanying this application. The petition concerns the Eleventh Circuit's denial of a certificate of appealability (COA) during Mr. James' initial round of federal habeas proceedings, which were ongoing when the Governor signed his death warrant. Not only does the

petition raise issues worthy of certiorari, but this Court should not tolerate the State's attempt to truncate pending, initial federal habeas proceedings with an execution.

I. Background

After being sentenced to death, Mr. James made a fatalistic decision to waive state collateral review and discharge appointed counsel. PCR 473-74.[1] Mr. James later reconsidered his decision and asked for counsel again, but the state courts refused. *See James v. State*, 974 So. 3d 365, 366-67 (Fla. 2008).[2] In total, Mr. James went without access to an attorney for approximately 15 years, until the federal district court in the Middle District of Florida appointed counsel to pursue federal habeas relief for Mr. James for the first time. MDFL-ECF 13. In 2018, counsel filed an initial federal habeas petition for Mr. James, and proffered procedural arguments to justify the untimely filing, including equitable tolling based on a confluence of mental incapacity and Florida's refusal to provide counsel. MDFL-ECF 23, 24.

After reviewing the federal habeas petition and procedural memorandum, the district court found good cause to stay the § 2254 proceedings to allow Mr. James to exhaust his substantive claims in state court. MDFL-ECF 29. This time, the state courts appointed counsel for Mr. James and allowed him to pursue relief, but

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[1] Citations to the state postconviction record will be designated "PCR." Citations to the district court's docket (M.D. Fla. No. 6:18-cv-993) will be designated "MDFL-ECF." Citations to the two relevant Eleventh Circuit dockets (Nos. 24-14162 and 25-10683) will be in the form "CA11-ECF" and "2CA11-ECF" respectively.

[2] The Florida Supreme Court only later recognized that denying counsel to death-sentenced people at any stage of their case is wrong, and has amended its rules to eliminate the practice. *See In re Amendments to Florida Rules of Criminal Procedure 3.851 and Florida Rule of Appellate Procedure 9.142*, 351 So. 3d 574, 575 (Fla. 2022).

ultimately found his claims were time-barred due to the prior waiver. *James v. State*, 323 So. 3d 158 (Fla. 2021). The district court lifted the stay of the federal proceedings and in September 2024 issued a 120-page order denying the petition as untimely and rejecting Mr. James' request for a hearing on procedural issues. MDFL-ECF 90.

In January 2025, Mr. James moved in the Eleventh Circuit for a COA to appeal the district court's order. CA11-ECF 6. On February 3, 2025, a single judge of the Eleventh Circuit denied Mr. James a COA. CA11-ECF 9-1.

Under 11th Cir. R. 27-2, Mr. James was afforded 21 days to move for a three-judge panel to reconsider the single-judge's COA denial. *See also Hodges v. Attorney Gen., State of Fla.*, 506 F.3d 1337, 1349 (11th Cir. 2007). Before that time expired, on February 18, 2025, the Governor signed Mr. James' death warrant, setting the execution for March 20, 2025.[3]

On February 24, 2025, Mr. James timely moved for a three-judge panel's review of his COA request.[4] CA11-ECF 24. On February 27, 2025, a three-judge panel of the Eleventh Circuit summarily denied reconsideration. CA11-ECF 17-1.

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[3] In the months leading up to the warrant, the Governor aggressively pursued a clemency investigation despite the pending federal litigation, causing Mr. James' appointed clemency counsel to withdraw due to ethical concerns about the premature proceedings. *See* Pet. at 13-14.

[4] At the same time, Mr. James moved in the district court to amend his § 2254 petition, despite the pending appeal, based on his gaining access for the first time to CT imaging scans that were taken during the pendency of his § 2254 litigation and significantly strengthened the procedural arguments and substantive claims he made to the district court and the Eleventh Circuit. The district court's and Eleventh Circuit's dismissal of the motion to amend for lack of jurisdiction, or alternatively for relief under Rule 60(b), implicates a circuit split pending before this Court in *Rivers*

II. The stay factors weigh in favor of granting a stay

Mr. James requests a stay of execution, pursuant to Supreme Court Rule 23 and 28 U.S.C. § 2101(f), pending consideration of his concurrently filed petition for a writ of certiorari. This Court is empowered to stay an execution pending consideration and disposition of a petition for a writ of certiorari because "[a]pproving the execution of a defendant before his appeal is decided on the merits would clearly be improper." *Barefoot v. Estelle*, 463 U.S. 880, 889 (1983). That is doubly true in Mr. James' case because, after finally accessing counsel and initiating federal habeas proceedings, he was not even able to complete one full round of regular review before the Governor signed his death warrant. *Cf. Lonchar v. Thomas*, 517 U.S. 314 (1996) (holding that a court may stay an execution if needed to resolve issues raised in initial petition).

While Mr. James recognizes that a stay of execution is "an equitable remedy" and is "not available as a matter of right," *Hill v. McDonough*, 547 U.S. 573, 584 (2006), each of the stay factors weigh in favor of granting one here. Those factors include likelihood of success on the merits, any undue delay, relative harm to the parties, and the public interest. *Id.*; *see also Nken v. Holder*, 556 U.S. 418, 434 (2009).

A. Mr. James is likely to succeed on the merits

Mr. James is likely to succeed on the merits because, in refusing to authorize him to appeal the district court's lengthy and complicated procedural order, the Eleventh Circuit overstepped the threshold COA standard, which only required Mr.

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v. Guerrero, No. 23-1345, and will be the subject of a separate certiorari petition and emergency stay application in this Court.

James' arguments to be reasonably debatable. *See Buck v. Davis*, 580 U.S. 100, 115 (2017); *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). The arguments presented in Mr. James' COA application to the Eleventh Circuit, and described in the accompanying petition for a writ of certiorari in this Court, are at least debatable enough to clear the threshold COA standard.

At a minimum, reasonable jurists could debate whether Mr. James proffered sufficient facts in the district court to warrant an evidentiary hearing on equitable tolling. At the pleading stage, all proffered facts must be accepted as true and all inferences drawn in the petitioner's favor. Here, Mr. James plausibly alleged that his mental incapacity had a causal connection to his inability to file a timely habeas petition because his "extreme deficits" caused a pervasive and irrational belief system that prevented him from understanding his legal situation or acting in his own interest. *See* MDFL-ECF 66 at 16. Mr. James' incompetent waivers of his postconviction proceedings, subsequent deprivation of counsel, and belated habeas filing directly flowed from these impairments. In support of this allegation, Mr. James proffered multiple expert opinions that explained the detrimental impact of his "flawed thinking, based on psychological trauma, brain damage, depression, self-loathing, and low self-esteem," and how that could have impacted Mr. James' "ability to rationally understand the charges against him, appreciate the penalties he faces, understand the legal system, and assist his attorneys." MDFL-ECF 66 at 16-17.

The district court's denial of an evidentiary hearing under these circumstances could be debated by reasonable jurists. In similar circumstances, the Middle District

of Florida has correctly granted a hearing. *See, e.g.*, *Miller v. Sec'y, Fla. Dep't of Corrs.*, No. 3:17-cv-932, ECF 35 at 10-12 (M.D. Fla. Apr. 16, 2021) (ordering evidentiary hearing where a petitioner presented "significant allegations" regarding a discrete aspect of an equitable tolling inquiry, even though resolution of the relevant factual disputes in his favor would not necessarily result in his petition being deemed timely).

B. Undue delay

The issue of delay is at the heart of these proceedings, given the district court's dismissal of the federal petition as time-barred. But delay is not a reason to deny a stay now. Since the day he filed his federal habeas petition in 2018, Mr. James has consistently pleaded that his untimely filing was causally linked to mental incapacity and lack of access to counsel stretching back to before the limitations period expired. Considering those arguments in 2018, the district court found good cause to grant a stay of the federal proceedings for state-court exhaustion pursuant to *Rhines v. Weber*, 544 U.S. 269 (2005), and Mr. James diligently exhausted his claims through one complete round of state-court review. He then returned to federal court and diligently pursued his § 2254 claims in the district court and on appeal to the Eleventh Circuit. Mr. James exhibited no delay in seeking federal relief—the proceedings pending when the death warrant was signed were initiated years ago.

In this case, it is actually the State that delayed pursuing an execution for over a decade while Mr. James languished without counsel. It was only once Mr. James accessed counsel and was litigating his federal habeas case in the courts that the Governor interrupted those proceedings with a warrant. Although successive

litigation is commonly expedited when a death warrant is signed, no other Florida petitioner seeking § 2254 review for the first time in the modern era has been subjected to such an abrupt fast-track once his initial proceedings were underway.

Florida's own death-warrant statute indicates that the Governor will not sign a warrant until the petitioner has completed "direct appeal and initial postconviction proceeding in state court and habeas corpus *and appeal therefrom in federal court*." Fla. Stat. § 922.052(a)(1) (emphasis added). The statute does also provide that a death warrant may be signed for individuals who "[a]llowed the time permitted for filing a habeas corpus petition in federal habeas court to expire," Fla. Stat. § 922.052(a)(2), but that is not the scenario presented here. Mr. James initiated his pending § 2254 litigation years ago, specifically arguing that he is entitled to equitable relief from the statute of limitations by virtue of multiple well-established federal habeas doctrines. Many federal habeas cases in Florida have involved the issue of timeliness, but those petitioners were allowed to seek one full round of initial, ordinary appellate review, including certiorari review. None were cut off mid-stream with a death warrant. *See, e.g.*, *Lugo v. Sec'y, Fla. Dep't of Corr.*, 750 F.3d 1198 (11th Cir. 2014) (discussing litigation of habeas petitions determined to be untimely under AEDPA).

C. Harm to parties

Irreparable injury to the petitioner "is necessarily present in capital cases." *Wainwright v. Booker*, 473 U.S. 935, 935 n.1 (1985); *see also In re Holladay*, 331 F.3d 1169, 1177 (11th Cir. 2003) ("We consider the irreparability of the injury that petitioner will suffer in the absence of a stay to be self-evident."). Beyond the obvious,

Mr. James' execution would mean that the Governor succeeded in truncating his pending federal habeas proceedings before the completion of one full round of review.

A stay of execution pending the disposition of Mr. James' certiorari petition will not substantially harm the State. While the State has a legitimate interest in the timely enforcement of valid criminal judgments, it does not have a legitimate interest in executing a petitioner before he has the opportunity to litigate the denial of his initial federal habeas petition on appeal. *See Banister v. Davis*, 590 U.S. 504, 507 (2020) (ruling that post-district-court-judgment § 2254 proceedings are "part and parcel of the first habeas proceeding."). If a stay is granted, the State will be in the same position it is in with respect to every other federal habeas petitioner in an initial posture—awaiting the final conclusion of the initial proceedings before proceeding with a death warrant. Moreover, the State chose not to pursue a death warrant for years before Mr. James secured federal counsel and initiated his federal habeas proceedings. Now that those proceedings are well underway, the State will suffer no substantial harm from waiting at least until this Court completes certiorari review.

D. Public interest

Granting a stay would not be adverse to the public interest. Like the State, the public has a legitimate interest in the timely enforcement of valid criminal judgments. However, the public also has an interest in allowing those who become criminal defendants to avail themselves of at least one complete round of state and federal review. As this Court is aware, the routine federal appeals process has exposed numerous state death sentences over the years as invalid under federal law.

Short-circuiting that process undermines confidence in the judiciary and hurts the public at large. *See Ray v. Commissioner, Ala. Dept. of Corrs*., 915 F. 3d 689, 701-02 (11th Cir. 2019) ("Of course, neither Alabama nor the public has any interest in carrying out an execution in a manner that violates the command of the Establishment Clause or the laws of the United States."). It would be adverse to the public interest to allow states like Florida the ability to truncate a federal appeals process that has not concluded in the name of conducting an execution more expeditiously. *See McGee v. McFadden*, 139 S. Ct. 2608, 2611-12 (2019) (Sotomayor, J., dissenting from denial of certiorari) (even where petitioner may not ultimately prevail on the merits, COA rulings should not be given "short shrift" and are "ill suited to snap judgment" due to what "can be lost when COA review becomes hasty.").

III. Conclusion

The Court should grant a stay of execution.

Respectfully submitted,

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