

OCTOBER TERM 2016

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

In re **KENNETH DEWAYNE WILLIAMS**, Petitioner

On Petition for Writ of Habeas Corpus

PETITIONER'S MOTION FOR STAY OF EXECUTION

CAPITAL CASE – EXECUTION SCHEDULED FOR APRIL 27, 2017

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Dated: April 27, 2017

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INTRODUCTION

Petitioner Kenneth Williams is currently scheduled to be executed today at 7:00 p.m. Mr. Williams respectfully requests from this Court a stay of execution pending consideration of his petition for writ of habeas corpus. That petition invokes the extraordinary jurisdiction of this Court because the traditional avenues for relief via the state and federal courts have not provided Mr. Williams a forum to litigate his claim that he is intellectually disabled, and thus categorically ineligible to be put to death. *Atkins v. Virginia*, 536 U.S. 304 (2002). In support of his claim, Mr. Williams has proffered declarations from three independent mental health professionals that he is a person with intellectual disability.

Neuropsychologist Daniel A. Martell, Ph.D. (who evaluated Mr. Williams last week), psychologist Mark D. Cunningham, Ph.D. (who evaluated Mr. Williams at trial), and neuropsychologist Ricardo Weinstein, Ph.D. (who was never asked to complete his evaluation for state post-conviction proceedings), have all concluded in 2017 that he is intellectually disabled and that he met the definition of intellectual disability at the time of the crime.

Mr. Williams now seeks a stay of execution so that this Court can review his meritorious claim for relief.

MR. WILLIAMS IS ENTITLED TO A STAY OF EXECUTION

1. The standards for a stay of execution are well-established. Relevant considerations for granting a stay include the prisoner's likelihood of success on the merits, the relative harm to the parties, and the extent to which the prisoner has unnecessarily delayed his or her claims. *See Hill v. McDonough*, 547 U.S. 573, 584 (2006); *Nelson v. Campbell*, 541 U.S. 637, 649-50 (2004); *see also Barefoot v. Estelle*, 463 U.S. 880, 895 (1983). All three factors weigh strongly in Mr. Williams's favor.

2. First, Mr. Williams's petition presents a "significant possibility of success on the merits." *Hill*, 547 U.S. at 584. As set forth in his petition, Mr. Williams put forth a substantial claim of intellectual disability, but neither the State of Arkansas nor the federal courts provided any forum for him to present the claim. Mr. Williams has been examined by three different qualified mental health experts – before trial, during state post-conviction proceedings, and after the February 27, 2017 warrant for his execution was issued. Each of these three experts, separately and independently, has opined that Mr. Williams suffers from intellectual disability as defined by "current medical standards." *Moore v. Texas*, 137 S. Ct. 1039, 1049 (2017). And although the State disagrees with these opinions, it has not produced any expert report or opinion that attempts to refute the three reporting experts. Yet, despite the proffer of substantial evidence that he is intellectually disabled, no

state court provided a forum or conducted a hearing to allow Mr. Williams to establish his exclusion. This Court's intervention and review is necessary to avoid the unconstitutional execution of an intellectually disabled person.

3. Second, the balance of harms weighs in Mr. Williams's favor. The harm to Mr. Williams of being put to death without ever receiving a hearing to determine whether he is intellectually disabled cannot be overstated. By contrast, the State's sole interest in securing Mr. Williams's imminent execution is that its current batch of the sedative midazolam will expire before the end of this month. But a State's interest in exhausting its supply of lethal injection drugs cannot outweigh the interest of Mr. Williams and the public in ensuring that a person with an intellectual disability not be put to death. *Moore v. Texas*, 137 S. Ct. 1039, 1048 (2017).

4. As this Court explained in *Atkins*: “[t]hose mentally retarded persons who meet the law’s requirements for criminal responsibility should be tried and punished when they commit crimes. Because of their disabilities in areas of reasoning, judgment, and control of their impulses, however, they do not act with the level of moral culpability that characterizes the most serious adult criminal conduct.” *Atkins*, 536 U.S. at 306. Therefore, “[n]o legitimate penological purpose is served by executing a person with intellectual disability. To do so contravenes the Eighth Amendment, for to impose the harshest of punishments on an

intellectually disabled person violates his or her inherent dignity as a human being.” *Hall v. Florida*, 134 S. Ct. 1986, 1992 (2014).

5. Finally, Mr. Williams has not unreasonably delayed the assertion of his rights. Undersigned counsel was appointed just over two weeks ago, on April 11, 2017. Prior to undersigned counsel’s appointment, Mr. Williams former counsel, Jeff Rosenzweig, alone represented Mr. Williams in state and federal post-conviction proceedings. In state court, Mr. Rosenzweig inexplicably abandoned an *Atkins* claim. Mr. Rosenzweig failed to raise an *Atkins* claim in federal court, and as the Supreme Court has recognized, “[a]dvancing such a claim would have required [counsel] to denigrate [his] own performance. Counsel cannot reasonably be expected to make such an argument which threatens [his] professional reputation and livelihood.” *Christeson v. Roper*, 135 S. Ct. 891, 894 (2015). Undersigned counsel has acted with all due haste in bringing this petition before this Court mere weeks after his appointment, and has not “unreasonably delayed” the assertion of Mr. Williams’s rights.

WHEREFORE, for the foregoing reasons and those explained in his petition for habeas corpus, Mr. Williams respectfully requests that the Court stay his execution pending its consideration of his meritorious claim for relief.

Respectfully submitted,

/s/ Shawn Nolan

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Dated: April 27, 2017

CERTIFICATE OF SERVICE

I hereby certify that on April 27, 2017, the foregoing was filed by email and First Class Mail upon the following:

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