

*****THIS IS A CAPITAL CASE*****
******EXECUTION SCHEDULED FOR TODAY AT 8:00 P.M. EDT******

No. _____

In the Supreme Court of the United States

MARCEL WAYNE WILLIAMS

Petitioner

v.

WENDY KELLEY, Director, Arkansas Department of Correction,

Respondent

On Petition for a Writ of Certiorari to the
United State Court of Appeals for the Eighth Circuit

EMERGENCY APPLICATION FOR STAY OF EXECUTION

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Petitioner, Marcel Wayne Williams, respectfully seeks from this Court a stay of execution pending the consideration of his petition for a writ of certiorari. This case comes before the Court in equitable circumstances which beg of this Court's immediate intervention. Marcel Wayne Williams suffered through tragic childhood circumstances which included physical, emotional, and sexual abuse from multiple perpetrators. However, Mr. Williams's jury did not hear a single fact evidencing this mitigating history. The only court to ever consider this evidence granted him habeas relief and vacated his death sentence. That relief was likewise vacated, however, as the evidence supporting his claims of ineffective assistance of counsel at the penalty phase were found to have been barred from consideration due to ineffective assistance of post-conviction counsel. Mr. Williams now faces an imminent execution despite this glaring defect in his capital sentencing. Despite the fact that he has been granted a Certificate of Appealability, his previous motions for a stay have been denied.

Here, the District Court granted a CoA, thus evidencing that the issues are at least debatable. *Slack v. McDaniel*, 529 U.S. 473, 483 (2000); *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). But despite the ruling, no stay of execution was granted by either the District Court or the Court of Appeals. Under *Barefoot* and the Circuit's Local Rules, when the District Court grants a CoA, a stay of execution pending appeal must be granted so the issues can be given the full appellate briefing, argument, and judicial review that they deserve. *Barefoot*, 463 U.S. at 893-94 (“[A] circuit court, where necessary to prevent the case from becoming moot by the petitioner's execution, should grant a stay of execution pending disposition of an appeal when a condemned prisoner obtains a certificate of probable cause.”); Eighth Circuit Local Rule 47A (“[I]n an *in forma pauperis* appeal in which a certificate of appealability has been issued, the

court will afford 14 days' notice before entering summary disposition if the briefs have not been filed.") (emphasis supplied).

Pending before this Court is a writ of certiorari raising 1) the split among the circuits as to whether a COA entitled a capital petitioner to a stay of execution; and 2) the availability of Rule 60(b) for claims defaulted by postconviction counsel. These issues warrant this Court's certiorari review. The only way for this Court to preserve its jurisdiction to consider these issues is for it to issue a stay of execution. The facts and law in support of the underlying issue are more fully set out in the petition for certiorari. The petition shows that this Court's certiorari review of the decision of the Eighth Circuit ruling is warranted. A stay is appropriate.

CONCLUSION

WHEREFORE, for the foregoing reasons, Mr. Williams respectfully prays that this Court stay his execution.

Respectfully submitted,

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