

FILED

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IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

CLERK, US DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS FLORIDA

CARY MICHAEL LAMBRIX,)
)
Petitioner,)
)
v.)
)
JULIE L. JONES,)
Secretary, Florida)
Department of Corrections,)
)
Respondent,)
)
and)
)
PAM BONDI,)
Attorney General of Florida, ()
)
Additional Respondent.)
)

CASE NO.: 2:17-CV-541-FM-99CM
CAPITAL CASE
EXECUTION SCHEDULED FOR
THURSDAY, OCTOBER 5, 2017

PETITIONER'S APPLICATION FOR A STAY OF EXECUTION

COMES now the Petitioner, CARY MICHAEL LAMBRIX, through undersigned counsel and respectfully moves for a stay of his execution. Mr. Lambrix's execution is presently scheduled for October 5, 2017 at 6:00 p.m.

Simultaneous with this motion, Mr. Lambrix is filing a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 in which he requested that this Court review constitutional claims that did not ripen until March 13, 2017, when Florida's capital sentencing statute was revised. Specifically, Mr. Lambrix presents constitutional claims in his petition arising as a result of the enactment of Chapter 2017-1 on March 13, 2017. Chapter 2017-1 revised Florida substantive law in a number of ways and specifically intended the revised statute to be applied retrospectively to criminal prosecutions arising from murders committed before the revised

statutory provisions became law. Mr. Lambrix sought to exhaust this claims in Rule 3.851 proceedings initiated in the Glades County Circuit Court of Florida. When the circuit court denied relief on September 6, 2017, Mr. Lambrix appealed to the Florida Supreme Court. Exhaustion was completed on September 29, 2017, when the Florida Supreme Court affirmed the denial of relief. The ruling was a merits adjudication.

In support of his habeas petition, Mr. Lambrix is filing a Memorandum of Law in which he explains why the petition is not a “second or successive” habeas application within the meaning of § 2244(b)(2) under *Panetti v. Quarterman*, 551 U.S. 930 (2007). The memorandum also sets forth the legal authority that establishes that his death sentences and scheduled execution violate the Equal Protection and Due Process Clauses of the Fourteenth Amendment, as well as the Eighth Amendment pursuant to *Furman v. Georgia*, 408 U.S. 238 (1972), *Johnson v. Mississippi*, 486 U.S. 587 (1988), and *Hall v. Florida*, 134 S. Ct. 1986 (2014). Within the memorandum, Mr. Lambrix also explains why the Florida Supreme Court’s merits adjudication on September 29, 2017 is not entitled to deference, but is instead subject to de novo review by this Court.

As explained in the memorandum, there is a likelihood of success on the claims in his habeas petition. Because his execution is currently set for October 5, 2017, Mr. Lambrix files the request for an order staying his scheduled execution.

This Court is to utilize a four part test in determining whether a stay of execution should issue:

whether the movant has made a showing of likelihood of success on the merits and of irreparable injury if the stay is not granted, whether the stay would substantially harm other parties, and whether granting the stay would serve the public interest.

Bundy v. Wainwright, 808 F. 2d 1410, 1421 (11th Cir. 1987). In light of the arguments raised in the federal habeas petition under 28 U.S.C. § 2254, and discussed in the supporting memorandum of law, Mr. Lambrix meets the standard for a stay of his execution. Each of the criteria is satisfied in this case:

A. IRREPARABLE INJURY

If no stay of execution is granted, Mr. Lambrix will be executed by lethal injection at the Florida State Prison on Thursday, October 5, 2017, at 6:00 p.m. This constitutes irreparable injury. *See, e.g., Evans v. Bennett*, 440 U.S. 1301, 1306 (1979) (Rehnquist, Circuit Justice, granting a stay of execution and noting the “obviously irreversible nature of the death penalty”); *O’Bryan v. Estelle*, 691 F.2d 706, 708 (5th Cir. 1982) (the “irreversible nature of the death penalty” constitutes irreparable injury and weighs heavily in favor of granting a stay).

B. HARM TO OTHER PARTIES

There will be no harm to other parties if a stay of execution is granted. Mr. Lambrix will remain in the custody of the State in Florida State Prison, where he has been held since his conviction. A relatively brief continuation of the *status quo* will cause absolutely no harm to other parties. Furthermore, it is worth noting that when Mr. Lambrix’s stay was lifted by the Florida Supreme Court on May 10, 2017, when a motion for rehearing was denied, the Attorney General waited 4 months to notify the Governor that the stay had been lifted so that Mr. Lambrix’s execution could be re-scheduled.¹ Further in the course of those four months, the

¹When the Florida Supreme Court issued its March 10, 2017 opinion denying Mr. Lambrix collateral relief, the court indicated that the stay of Mr. Lambrix’s execution was lifted. *Lambrix v. State*, 217 So. 3d 977 (Fla. 2017). However, the court’s opinion indicated that the opinion was not final until the time for filing a motion for rehearing had run or if a rehearing motion was filed, until rehearing was denied. As a result, the March 10 opinion did not become final until May 10, 2017. As a result, the stay of execution was effectively lifted when the Florida Supreme

Attorney General's Office, serving as counsel for the State of Florida, was litigating the constitutional issue presented in the habeas petition before this Court. Surely in these circumstances, the State will not suffer any harm if the Court imposes a brief stay to consider Mr. Lambrix's petition.

C. PUBLIC INTEREST

Although there are competing public interests, ultimately one factor favors the issuance of the temporary relief sought. Although the public has a general interest in having the execution of Mr. Lambrix pursuant to the judgment of the Florida Courts, the public has a stronger and more important interest placed elsewhere. In this instance, there is a strong public interest in ensuring that Mr. Lambrix receives a fair proceeding before he is put to death—one in which he is meaningfully heard on the issue before this court. As an initial matter, it must be recognized that the factual predicate for Mr. Lambrix's Petition was not available until March 13, 2017—the date that Chapter 2017-1 was enacted. Further, this claim had not reached this court sooner because it was not exhausted in state court until September 29, 2017—a mere six days before Mr. Lambrix's scheduled execution. Finally, in light of the constitutional defect created by the retrospective application of Chapter 2017-1, which is arbitrarily not extended to Mr. Lambrix and denies him the substantive right to a life sentence unless a jury unanimously recommends death violates the Equal Protection and Due Process Clauses of the Fourteenth Amendment, as well the Eighth Amendment. As a result, the public has an interest in resolving this issue to ensure that the death penalty is reliably imposed and implemented in a non-arbitrary and consistent fashion.

Court denied Mr. Lambrix's motion for rehearing.

D. THE LIKELIHOOD THAT MR. LAMBRIX WILL PREVAIL ON THE MERITS

As explained in the supporting memorandum of law this habeas petition as to the claims presented is to be treated as an initial habeas petition. Further, the memorandum demonstrates that Mr. Lambrix's claims are compelling and carrying a likelihood that he will prevail on the merits of the challenges to his death sentences and pending execution.

For the foregoing reasons and those set forth in his petition and the supporting memorandum of law, Mr. Lambrix respectfully requests that this Court grant a stay of his scheduled execution.

This 2nd day of October, 2017.

Respectfully submitted,

/s/ Martin J. McClain
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document has been served on the following counsel on this 2nd day of October, 2017.

/s/ Martin J. McClain
MARTIN J. MCCLAIN
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Copies furnished to:

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