

DOCKET NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2006

CLARENCE EDWARD HILL

Petitioner,

vs.

WILLIAM McDONOUGH,
SECRETARY FLORIDA
DEPARTMENT OF CORRECTIONS;
AND
CHARLIE CRIST,
Florida Attorney General,

Respondent(s).

CAPITAL CASE
EXECUTION SCHEDULED FOR
SEPTEMBER 20, 2006, 6:00 P.M.

APPLICATION FOR STAY OF EXECUTION
PENDING RESOLUTION OF PETITION
FOR A WRIT OF CERTIORARI TO THE
ELEVENTH CIRCUIT COURT OF APPEALS

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REQUEST FOR STAY OF EXECUTION

Petitioner, Clarence Edward Hill, applies to this Court pursuant to 28 U.S.C. § 2201(f) for a stay of his execution, currently scheduled for September 20, 2006 at 6:00 p.m., and states as follows:

1. On September 1, 2006, Mr. Hill filed an amended complaint pursuant to 42 U.S.C. § 1983 in the United States District Court, Northern District of Florida, Tallahassee Division. Mr. Hill alleged violations of his right to be free from cruel and unusual punishment under the Eighth and Fourteenth Amendments to the United States Constitution. On that same date, the district court denied Mr. Hill's complaint for declaratory and injunctive. Thereafter, the district court denied Mr. Hill's motion for reconsideration on September 11, 2006.

2. On September 13, 2006, Mr. Hill filed a Notice of Appeal. On that same date, Mr. Hill filed in the Eleventh Circuit an Application for a Stay of Execution and for Expedited Appeal, which was denied on September 15, 2006.

3. Mr. Hill seeks an Order from this Court for a stay of execution pursuant to 28 U.S.C. § 2201(f), which provides in part:

In any case in which the final judgment or decree of any court is subject to review by the Supreme Court on writ of certiorari, the execution and enforcement of such judgment or decree may be stayed for a reasonable time to enable the party aggrieved to obtain a writ of certiorari from the Supreme Court.

4. Mr. Hill asks this Court to stay his presently scheduled execution to allow the Court adequate time to consider the Petition.

5. This Court's authority to enter a stay of execution has been analyzed by this Court as involving the following four-part test:

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). See also, Barefoot v. Estelle, 463 U.S. 880 (1983)

6. Mr. Hill has met the standards attendant to the granting of a stay of his execution. Each of the criteria is satisfied in this case.

A. IRREPARABLE INJURY

7. If the requested stay is not issued, Mr. Hill will be executed at 6:00 p.m. on Wednesday, September 20, 2006. This execution will carry an unacceptably high risk of being conducted in a torturous manner in violation of Mr. Hill's Eighth Amendment right to be free from cruel and unusual punishment. 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); *Jolly v. Coughlin*, 76 F.3d 468, 482 (2d Cir. 1996) (holding that continued pain and suffering resulting from deliberate medical indifference is irreparable harm).

Additionally, the State's violation of Mr. Hill's Eighth Amendment rights alone validates a presumption of irreparable harm. See *Associated General Contractor's of California, Inc. v. Coalition for Economic Equity*, 950 F.2d 1401, 1412 (9th Cir. 1991) (an alleged constitutional infringement will often alone constitute irreparable harm).

B. HARM TO OTHER PARTIES

8. There will be no harm to other parties if a stay of execution is granted. Mr. Hill will remain in custody at Florida State Prison, where he has been held since his conviction and, most recently, since the stay of execution was entered by the Supreme Court of the United States on January 25, 2006. A relatively brief continuation of the *status quo* will cause absolutely no harm to other parties. See *Gomez v. U.S. Dist. Ct. For Northern Dist. Of Cal.*, 966 F.2d 460, 462 (9th Cir. 1992) (Noonan, J., dissenting from grant of writ of mandate) ("The state will get its man in the end. In contrast, if persons are put to death in a manner that is determined to be cruel, they suffer injury that can never be undone, and the Constitution

suffers an injury that can never be repaired.")

C. PUBLIC INTEREST

9. Although there are competing public interests, ultimately one factor favors the issuance of the temporary relief sought. Certainly, the public has an interest in the execution of Mr. Hill pursuant to the judgment of the Florida Courts. More importantly, however, it has an interest in determining that Mr. Hill's execution will be carried out consistent with the requirements of the Eighth Amendment. Additionally, the State has an interest in not subjecting Mr. Hill to the excruciating and torturous pain likely involved in the lethal injection process Florida intends upon utilizing. See *Sims v. State*, 754 So.2d 657 (Fla. 2000). It is therefore paramount that Mr. Hill's weighty constitutional claims be resolved on the merits.

10. Further, as set forth in his petition, by arbitrarily setting an execution date while this case was awaiting remand, the State has attempted to manipulate the process and deny Mr. Hill his right to have this unconstitutional method of execution reviewed on the merits. Certainly, it is in the public interest not to permit the State to deprive Mr. Hill of his right to pursue his claims, and thereby achieve its ultimate goal - to prevent Florida's lethal injection procedure from being subjected to any meaningful scrutiny.

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

11. The likelihood that Mr. Hill will prevail on the merits of his claims is demonstrated by the discussion presented in detail in his Petition, which examines recent developments in similarly situated cases where the merits have actually been examined. Given the success in those cases, a stay of execution and full and fair review are appropriate here.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to Carolyn Snurkowski, Assistant Attorney General, Office of the Attorney General, Plaza Level 1, The Capitol, Tallahassee, FL 32399, this 18th day of September 2006.

/s/ D. Todd Doss

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