

No.

IN THE SUPREME COURT OF THE UNITED STATES

Christopher Brooks,
Petitioner,

v.

Alabama,
Respondent.

CAPITAL CASE
EXECUTION OF CHRISTOPHER BROOKS
SCHEDULED FOR 6:00pm (CST)
THURSDAY, JANUARY 21, 2016

APPLICATION FOR STAY OF EXECUTION

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APPLICATION FOR STAY OF EXECUTION

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

Petitioner, Christopher Brooks, respectfully requests a stay of his execution, which is scheduled for January 21, 2016 at 6:00pm CST.

Petitioner asks this court to stay his execution in order to permit this Court to consider his Petition for Writ of Certiorari to the Alabama Supreme Court. Mr. Brooks filed his Petition for Writ of Certiorari concurrently with this Application for Stay of Execution. Pursuant to statute, Supreme Court Rules 23.1, 23.2, and under the authority of 28 U.S.C. § 2101(f), the stay may lawfully be granted.

In the accompanying Petition for Writ of Certiorari, Mr. Brooks asks this Court to review a decision of the Alabama Supreme Court refusing to grant him relief from his unconstitutional sentence despite this Court's decision in *Hurst v. Florida*,¹ which invalidated Florida's (and by inference, Alabama's) death sentencing scheme. Mr. Brooks'

¹ 2016 WL 112683 (Jan. 12, 2016).

constitutional claim will become moot if he is executed as scheduled pursuant to an illegal sentence.²

Principles of equity favor staying Mr. Brooks' execution. He has made no "last-minute attempt to manipulate the judicial process."³

Rather, this Court's opinion in *Hurst* was rendered on January 12, 2016, nine days before Mr. Brooks' scheduled execution. He filed his motion for relief in the Alabama Supreme Court on January 15, 2016. The Alabama Supreme Court denied that motion on January 19, 2016.

This Court should grant a stay if Mr. Brooks shows that there is a reasonable probability that four members of the Court will consider the issue sufficiently meritorious to grant certiorari.⁴ If that threshold is met, then the stay should be granted if, upon granting *certiorari* and resolving the constitutional issues presented, five Justices are likely to conclude that the case was erroneously decided below.⁵

² See *Wainwright v. Booker*, 473 U.S. 935, 936 (1985) (Mem.) (Powell, J. concurring).

³ *Nelson v. Campbell*, 541 U.S. 637, 649 (2004) (quoting *Gomez v. United States Dist. Court for Northern Dist. of Cal.*, 503 U.S. 653, 654 (1992)).

⁴ See, e.g., *Multimedia Holdings Corp. v. Cir. Ct. of Fla.*, 544 U.S. 1301 (2005) (Kennedy, J.).

⁵ See, e.g., *Barefoot v. Estelle*, 463 U.S. 880, 895- 96 (1983).

Mr. Brooks meets both of those standards. Mr. Brooks' *certiorari* petition is meritorious and raises an important federal issue that a state court of last resort decided in conflict with an opinion of this Court: is Alabama's death-sentencing scheme unconstitutional? Mr. Brooks' case also raises an important question related to this Court's jurisdiction, one that this Court has already raised and heard in *Montgomery v. Louisiana*.⁶ The issue concerns whether this Court has jurisdiction to review a state court's ruling on the issue of whether one of this Court's decisions applies retroactively.⁷ Therefore, there is a reasonable probability that this Court would grant *certiorari* in Mr. Brooks' case.

Mr. Brooks also meets the second part of the standard, namely whether five members of the Court would rule in his favor. In *Hurst*, after evaluating the constitutionality of Florida's virtually identical death penalty sentencing scheme, eight members of this Court concluded that Florida's scheme was unconstitutional. It is more than reasonably probable that the same eight members of this Court would

⁶ 14-280.

⁷ 135 S.Ct. 1546 (2015).

rule that Alabama's advisory jury sentencing scheme would be unconstitutional.

This Court's decision in *Hurst* impliedly invalidates Alabama's death sentencing scheme, and with it, Mr. Brooks' sentence. The Alabama Supreme Court failed to recognize both of those points, and denied his motion for relief. Given the constitutional error in that conclusion, five Justices of this Court are likely to conclude that the case was erroneously decided below.

While the harm to Mr. Brooks would be great if a stay is not granted, the State will suffer no harm. There can be no harm to the State in delaying an execution to allow the constitutionality of Alabama's death sentencing scheme and the validity of Alabama death sentences to be resolved before this Court. Alabama can have no interest in carrying out illegal sentences.

Finally, staying the currently scheduled executions for Mr. Brooks would be in the interest of the public. All citizens have an interest in ensuring that the Constitution is upheld.⁸ The public interest is even

⁸ See *Gannett Co., Inc. v. DePasquale*, 443 U.S. 368, 383 (1979).

greater where, as here, the ultimate punishment of death is being carried out.⁹

This Court's decision in *Hurst* invalidates Alabama's death sentencing scheme. The Alabama Supreme Court refused to recognize the validity of *Hurst*, both as it applies generally to Alabama and specifically to Mr. Brooks. This Court should stay Mr. Brooks' scheduled execution and hold his *certiorari* petition for the resolution of *Montgomery v. Louisiana*.

Respectfully submitted,

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⁹ *Woodson v. North Carolina*, 428 U.S. 280, 303-04 (1976).