No. 15-7786 and 15A755

CAPITAL CASE

IN THE SUPREME COURT OF THE UNITED STATES

CHRISTOPHER EUGENE BROOKS,
Petitioner,

v.

STATE OF ALABAMA,
Respondent.

On Petition for a Writ of Certiorari to the
Alabama Supreme Court

BRIEF OF RESPONDENT IN OPPOSITION TO CERTIORARI AND TO THE MOTION FOR STAY OF EXECUTION

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EXECUTION SCHEDULED FOR JANUARY 21, 2016

QUESTIONS PRESENTED
(Restated)

I. Should this Court deny Brooks's petition for writ of certiorari and his request for a stay of execution where the jury unanimously found the existence of aggravating circumstances necessary to impose the death penalty in compliance with Ring v. Arizona and Hurst v. Florida?

II. Should this Court deny Brooks's petition for a writ of certiorari and his request for a stay of execution where Brooks has exhausted his appeals and Ring v. Arizona does not apply retroactively?

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INTRODUCTION

Brooks has failed to advance any compelling reason for this Court to review his case, let alone grant a stay of execution. Review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only for "compelling reasons." Sup. Ct. R. 10; see also Fay v. Noia, 372 U.S. 391, 436 (1963). Moreover, a stay pending disposition of a petition for writ of certiorari should be granted only where there are "substantial grounds upon which relief might be granted." Barefoot v. Estelle, 463 U.S. 880, 895 (1983).

Here, Brooks's petition fails to present any compelling reason or substantial ground to warrant this Court's attention. Brooks's argument that his execution should be stayed because this Court's recent decision in Hurst v. Florida, No. 14-7505, 2016 WL 112683 (Jan. 12, 2016), invalidated "by inference" Alabama's capital sentencing system is wholly without merit. (Application for Stay at 1.) First, in Hurst, this Court addressed the specific problem in Florida law that the jury did not find any facts that made the case death-penalty eligible, and did not address, let alone mention, Alabama in that decision. This Court upheld the constitutionality of Alabama's current capital sentencing statute in Harris v. Alabama, 513 U.S. 504 (1995), and that decision remains good law.

Second, and more importantly, unlike in Florida, the jury in Brooks's case specifically found the aggravating circumstances necessary to impose the death

penalty. Specifically, the jury's unanimous guilty verdicts of capital murder during the course of a robbery, burglary, and rape, proved the existence of an aggravating circumstance under Section 13A-5-49(4) of the Code of Alabama. See Ala. Code § 13A-5-45(e)(1975) ("[A]ny aggravating circumstance which the verdict convicting the defendant establishes was proven beyond a reasonable doubt at trial shall be considered as proven beyond a reasonable doubt for purposes of the sentencing hearing."). This important fact distinguishes Alabama law and Brooks's case from Hurst and Florida law, which required the trial judge, not the jury, to find aggravating facts. See Hurst, 2016 WL 112683, at *5. Thus, Hurst fails to offer any reason that certiorari or stay of execution should be granted in this case. Indeed, granting certiorari here would serve no purpose because Brooks's jury made the critical findings that were absent in Hurst and represented the heart of that case. Thus, the petition and application for a stay should be denied.

STATEMENT OF THE CASE

Brooks committed a horrific criminal act over twenty-three years ago by murdering and raping Jo Deann Campbell. The Court of Criminal Appeals summarized the facts presented at Brooks's trial in its opinion on direct appeal:

> The evidence at trial showed that [Brooks] and the victim met while working as counselors at a camp in New York state. On December 31, 1992, the victim's body was found under the bed in the bedroom of her apartment in Birmingham, Alabama. She had been bludgeoned to death, and she was naked from the waist down.

> On the night before the victim's body was found, a co-worker of the victim's saw [Brooks] enter the restaurant where they worked and saw the victim talking to [Brooks]. Later that night, the victim spoke with another friend by telephone; that friend heard a male voice in the background and the victim told her friend that a friend was sleeping on her living room floor.
>
> A DNA analysis was performed on semen found in the victim's vagina. The results were compared with [Brooks] blood. There was testimony that the odds of finding another person with the same DNA as [Brooks's] and as found in the semen taken from the victim's body would be 1 in 69,349,000 among white persons and 1 in 310,100,000 among black persons. [FN1: Brooks is a white male.] A latent print of [Brooks's] palm was found on the victim's left ankle. A bloody fingerprint matching [Brooks's] was found on a doorknob in the victim's bedroom, as were two other matching latent fingerprints. [Brooks's] thumbprints were also found on a note in the victim's apartment.
>
> The evidence further showed that [Brooks] was seen driving the victim's car on the night of December 31 and that he told a witness that he "had to fuck that girl to get that car." The car was found in Columbus, Georgia, where [Brooks] resided. Inside the car was a package of photographs with the name "Brooks, C." on the package. When [Brooks] was arrested, he had in his possession the victim's car keys and her Shell Oil Company credit card, which he had used on several occasions. He had also cashed the victim's paycheck and one of her personal checks. Several items were missing from the victim's apartment and the evidence showed that [Brooks] had pawned these items at various pawnshops in Columbus.

Brooks v. State, 695 So. 2d 176, 178-79 (Ala. Crim. App. 1996).

A. Brooks's trial

Based on the facts above, the jury convicted Brooks of three counts of capital murder: for murder committed during the course of a robbery, burglary, and rape. R. 1081-82; see Ala. Code § 13A-5-40(a)(2), (3), and (4). The State

presented evidence at the guilt and penalty phases before the jury that established two aggravating circumstances. First, the jury's guilt-phase verdict established the aggravating circumstance that Brooks committed a capital offense while engaged in the commission of a first-degree rape, first-degree burglary, and a first-degree robbery, thus making the case death penalty eligible. (C. 27–28); see Ala. Code § 13A-5-50 (1975) ("By way of illustration and not limitation, the aggravating circumstance specified in Section 13A-5-49(4) shall be found and considered in determining sentence in every case in which a defendant is convicted of the capital offenses defined in subdivisions (1) through (4) of subsection (a) of Section 13A-5-40."). In addition, the prosecutor presented evidence during the penalty phase that proved the existence of the aggravating circumstance that Brooks's crime was "especially heinous, atrocious or cruel compared to other capital offenses." See Ala. Code § 13A-5-49(8) (1975).

In support of the heinous, atrocious, and cruel aggravating circumstance, Dr. Gary Simmons testified that in the course of his autopsy of Campbell's body, he observed numerous facial lacerations and bruises; multiple fractures to the base of the victim's skull; a contusion and swelling in the brain; a fracture to the skull above the eye area; a broken nose; a broken jawbone; numerous loosened and missing teeth, some of which had been knocked or inhaled into the windpipe; a fracture to the cartilage that formed part of the windpipe; possible indications of

strangulation; significant internal bleeding; and extensive hemorrhaging. R. 1102–25, 1135–36. These injuries, according to Dr. Simmons, were consistent with the victim being struck forcefully with the eight-pound weight that was found at the crime scene. Id. at 1124–26. He further stated that in his opinion, Campbell was struck five to eight times with the eight-pound weight and that she lived at least five minutes after the blows were struck. Id. at 1126–27, 1132–33.

Following the presentation of evidence at the penalty phase, the jury recommended, by a vote of 11–1, that Brooks be sentenced to death. Id. at 1224.

A sentencing hearing was held before the trial court on November 10, 1993. Id. at 1228–53. The trial court found that the aggravating circumstances outweighed the mitigating circumstances, accepted the jury's recommendation, and sentenced Brooks to death. Id. at 1252–53. Specifically, in the trial court's sentencing order, the trial judge noted the following concerning the jury's factual findings:

> "Defendant Brooks was charged in a three count indictment with the capital murder of Jo Deann Campbell.
>
> Count I alleged murder in the first degree rape, Count II alleged murder during the first degree burglary and Count III alleged murder during first degree robbery.
>
> Defendant was found guilty of each of the aforementioned capital offenses, thus the fact finders were convinced beyond a reasonable doubt that the deceased was intentionally killed during a first degree rape, a first degree burglary and a first degree robbery."

(C. 27-28.) The trial judge then specifically noted the following: "In conclusion the undersigned concurs in the jury's findings that the capital offenses were committed while the defendant was engaged in the commission of a rape, burglary, and robbery." Id. at 28 (emphasis added).

B. Procedural history

Brooks's capital murder conviction and death sentence were affirmed on direct appeal. Brooks, 695 So. 2d at 184; Ex parte Brooks, 695 So. 2d 184 (Ala. 1997). Notably, on direct appeal, Brooks did not raise a challenge to Alabama's capital sentencing scheme. Brooks then filed a petition for writ of certiorari in the United States Supreme Court, which was denied. Brooks v. Alabama, 522 U.S. 893 (1997).

Brooks filed a Rule 32 petition for state post-conviction relief on September 4, 1998 (Rule 32 C. 138–232), which was denied by the circuit court after an evidentiary hearing. (Rule 32 C. 10–80.) The Court of Criminal Appeals affirmed. Brooks v. State, 929 So. 2d 491 (Ala. Crim. App. 2005). This Court subsequently denied Brooks's petition for writ of certiorari.

Brooks then filed a federal habeas petition pursuant to 28 U.S.C. § 2254, Doc. 1, which the district court denied. Docs. 38, 39. After considering the briefs and conducting oral argument, the Eleventh Circuit affirmed the district court's order. Brooks v. Comm'r, Alabama Dept. of Corr., 719 F.3d 1293 (11th

Cir. 2013). This Court again denied certiorari. Brooks v. Thomas, 134 S.Ct. 1541 (2014).

On January 15, 2016, Brooks filed a petition for a stay of his January 21 execution with the Alabama Supreme Court, alleging that his death sentence "might be unconstitutional under Hurst v. Florida." The State filed a brief in opposition. On January 19, 2016, the Alabama Supreme Court issued an order denying Brooks's application for a stay. See Exhibit A.

REASONS FOR DENYING THE WRIT AND THE REQUEST FOR A STAY OF EXECUTION

I. Certiorari review is unavailable to Brooks, because he seeks review of a state supreme court order interpreting a state law procedural rule and the resolution of Brooks's state court request was not dependent on the federal question presented.

Brooks's application for a stay in the Alabama Supreme Court arose from administrative proceedings instituted under Rule 8(d)(1) of the Alabama Rules of Appellate Procedure, pertaining to the Alabama Supreme Court's responsibility to lift the automatic stay of execution in Alabama capital cases "at the appropriate time [to] enter an order fixing a date of execution . . . upon disposition of the appeal or other review." There is no provision in that state procedural rule for granting relief from conviction or sentence, as action is predicated "upon disposition of the appeal or other review." Id. Because Rule 8(d)(1) is administrative in nature and is operable only "upon disposition of the appeal or

other review," Brooks's claim of jurisdiction under 28 U.S.C. § 1257(a) is erroneous. (See Pet. at 2.)

Brooks's habeas review ended on March 24, 2014, when this Court denied certiorari. Brooks v. Thomas, __ U.S.__, 134 S.Ct. 1541 (2014) (Mem). And while Brooks filed a civil complaint under 42 U.S.C. § 1983 in the United States District Court for the Middle District of Alabama, that action does not attack the fact of, or validity of, his sentence or conviction. See, e.g., Hill v. McDonough, 547 U.S. 573, 126 S. Ct. 2096 (2006); Nelson v. Campbell, 541 U.S. 637, 124 S. Ct. 637 (2004). There is no dispute that Brooks has not sought permission to file a successive *habeas* petition in the federal courts, nor has he sought to file any successive state-court post-conviction petition challenging the validity of his sentence in Alabama's courts under the Alabama Rules of Criminal Procedure. Thus, there is no case or controversy currently pending that questions the validity of Brooks's conviction or sentence under federal law.

The question presented below of whether, after disposition of appeal or other review in a capital case, the appropriate time has come for the Alabama Supreme Court to enter an order fixing a date of execution is one that sounds solely in state procedural law as a ministerial function of the court. Further, that issue is one that is solely entrusted to the Alabama Supreme Court under Alabama's rules, resting entirely on state law considerations after disposition of appeals and collateral

review. For reasons of federalism and comity, this Court should decline to exercise its certiorari jurisdiction where the state court judgment rests upon on an independent and adequate state law ground that the absence of any appeal or other review challenging Brooks's conviction or sentence renders January 21, 2016, the appropriate time for his execution. See, e.g., Berry v. Mississippi, 552 U.S. 1007, 128 S.Ct. 528 (Mem) (2007); Wilson v. Loew's Incorporated, 355 U.S. 597, 78 S. Ct. 526 (1958); see also, Beard v. Kindler, 558 U.S. 53, 130 S. Ct. 612 (2009); Coleman v. Thompson, 501 U.S. 722, 111 S. Ct. 2546 (1991).

The fact that Brooks attempted to use Hurst v. Florida as the justification for his argument to the Alabama Supreme Court that it was no longer the appropriate time for his execution does not convert that proceeding into one involving a federal constitutional issue subject to this Court's certiorari review. Whether the existence of Hurst renders it an inappropriate time to set Brooks's execution is not a federal question, where there has been no invocation of an independent procedural vehicle capable of presenting that federal constitutional question to a state or federal court capable of granting relief as to Petitioner's sentence or conviction. For the Alabama Supreme Court to determine that January 21, 2016, remains the appropriate time for Brooks's execution—in the light of the fact that Brooks has not obtained permission from any federal court or state court to gain successive review of his conviction and sentence after the final disposition of his "appeal or

other review" under Rule 8(d)(1)—does not infringe upon any federal question or issue and involves the strict application of state procedural rules to this case. The Alabama Supreme Court's order did not discuss or interpret Hurst, and there is no legitimate basis for finding that the state court ruling rested on the resolution of a federal issue, where Brooks has not gained access to any court capable of granting him the relief he requests.

The ministerial nature of the Alabama Supreme Court's duty under Rule 8(d)(1) also removes that court's decision to deny a stay from the scope of § 1257(a), which applies only to "final orders" in a case or controversy. Here, the Alabama Supreme Court set Brooks's execution date on November 23, 2015, long after completion of Brooks's appeal and collateral review and before Hurst was decided. Brooks asked the Alabama Supreme Court to stay its administrative order and the Court declined to do so. It is doubtful that the Court's refusal to vacate its ministerial act of setting his execution date qualifies as a "final order" for § 1257(a) purposes under this Court's precedent. See, e.g., San Diego Gas & Elec. Co. v. City of San Diego, 450 U.S. 621, 101 S.Ct. 1287 (1981); Market St. Ry. Co. v. Railroad Commission of State of Cal., 324 U.S. 548, 551-52, 65 S. Ct. 770, 773 (1945). For example, if Brooks were to gain permission to file a successive habeas petition, he could once again petition the Alabama Supreme Court to enter a stay based on the existence of such "other review."

Brooks's reliance on § 1257(a) as a basis for invoking the jurisdiction of this Court is misplaced inasmuch as he seeks review of an interlocutory review of an administrative order denying action on an earlier administrative order of the Alabama Supreme Court. Because there is no "final order" stemming from an active case or controversy capable of granting Brooks relief on the federal questions he seeks to present through Hurst, certiorari review would be inappropriate in this case.

II. Brooks's petition for a stay should be denied because Alabama's capital sentencing statute is constitutional and remains unaffected after Hurst v. Florida.

Turning to the merits of Brooks's argument, Hurst provides no basis for a stay of Brooks's execution. Hurst does not implicate Brooks's case because the jury found the required aggravating circumstances that were necessary to render him eligible for the death penalty. In Hurst, this Court did not break any new substantive ground, but simply applied the principles of Ring v. Arizona, 536 U.S. 584 (2002) to the unusual situation in Florida's statutes which required the trial judge alone to find the existence of aggravating circumstances. Alabama's capital sentencing scheme is wholly different from Florida's in this specific regard. Thus, Brooks cannot show that he is entitled to a stay or to the grant of certiorari.

A. Alabama's capital sentencing statute is constitutional.

As an initial matter, this Court has held that Alabama's capital sentencing scheme is constitutional. See Harris, 513 U.S. at 511, 515 ("Consistent with established constitutional law, Alabama has chosen to guide the sentencing decision by requiring the jury and judge to weigh aggravating and mitigating circumstances.") This Court in Hurst did not even mention Harris, let alone overrule it. Nor did the Hurst Court mention Alabama in its recent decision or suggest that Alabama's capital sentencing system was similar to Florida's in regard to the narrow issue addressed in Hurst.

Indeed, this Court was well aware of Alabama's system when it decided Hurst. Specifically, during the same term in which Hurst was submitted to this Court, an Alabama death-row inmate filed a petition for writ of certiorari challenging Alabama's sentencing system as inconsistent with Ring. See Lockhart v. Alabama (No. 14-8194). This Court denied certiorari in that case on April 20, 2015, Lockhart v. Alabama, 135 S.Ct. 1844 (2015), - over a month after the Court granted certiorari in Hurst. See Hurst v. Florida, 135 S.Ct. 1531 (2015). Even after Lockhart asked for rehearing based on the grant of certiorari in Hurst and requested that his petition be stayed pending the decision in Hurst arguing that the Hurst decision might affect Alabama's capital sentencing system, this Court again denied the petition.

Thus, it is clear that the Court was well aware of Alabama's capital sentencing system at the time of deciding Hurst, but that the decision specifically dealt with the unique issues present in Florida law, not Alabama law. Alabama's capital sentencing system remains constitutional and Brooks's request has no merit.

B. Alabama's capital sentencing procedure complies with Ring.

In Brooks's trial, the jury found the aggravating circumstances that were required for the imposition of the death penalty. See Brooks, 695 So. 2d at 178; (C. 27-28.) There are two major differences between the problems identified in Hurst, and the sentencing procedure in Brooks's case, which fully complied with Ring. First, Hurst's jury convicted him of capital murder, "but did not specify which theory [premeditate or robbery-murder] it believed." Hurst, 2016 WL 11268316, at *3. Second, "Florida does not require the jury to make the critical findings necessary to impose the death penalty." Id. at *5.

Alabama law and, more importantly, Brooks's actual sentencing determination are wholly different because the jury did find the specific facts necessary to impose the death penalty. Alabama law requires that "any aggravating circumstance which the verdict convicting the defendant establishes was proven beyond a reasonable doubt at trial shall be considered as proven beyond a reasonable doubt for purposes of the sentence hearing." Ala. Code §

13A-5-45(e) (1975). Relevant here, Alabama law further clarifies that the very aggravating circumstances found to exist in this case were established as a result of the jury's unanimous guilty verdicts. See Ala. Code § 13A-5-50 ("the aggravating circumstance specified in Section 13A-5-49(4) shall be found and considered in determining sentence in every case in which a defendant is convicted of the capital offenses defined in subdivisions (1) through (4) of subsection (a) of Section 13A-5-40.").

Thus, the jury findings mandated by Ring are precisely what occurred in Brooks's case. The jury found Brooks guilty of three counts of capital murder: capital murder during the course of a robbery (section 13A-5-40(2)), capital murder during the course of a rape (section 13A-5-40(3)), and capital murder during the course of a burglary (section 13A-5-40(4)). See Brooks, 695 So. 2d at 178. In fact, the trial court specifically found in its sentencing order that the jury had made "findings that the capital offenses were committed while the defendant was engaged in the commission of a rape, burglary, and robbery." (C. 28)(emphasis added). By virtue of the jury's guilt phase verdict, the aggravating circumstance under Section 13A-5-49(4) was necessarily proven beyond a reasonable doubt for purposes of Brooks's sentencing determination. See Ala. Code § 13A-5-45(e). In other words, the jury made "the critical findings necessary

to impose the death penalty" in Brooks's case. Hurst, 2016 WL 112683, at *5.[1] This is the critical distinction in why Ring presented a problem in Florida, but does not present a problem in Alabama. Unlike Alabama, Florida law did not provide for the jury to make specific findings concerning aggravating circumstances that rendered the defendant eligible for the death penalty.

Alabama's procedure is perfectly consistent with Ring. Ring only requires "that the jury must find the existence of the fact that an aggravating factor existed." Ring, 536 U.S. at 612 (Scalia, J., concurring). "Those States that leave the ultimate life-or-death decision to the judge may continue to do so—by requiring a prior jury finding or aggravating factor in the sentencing phase or, more simply, by placing the aggravating-factor determination (where it logically belongs anyway) in the guilt phase." Id. at 612-13 (Scalia, J., concurring).

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[1] Further the trial court's instructions during the guilt phase of trial make it even more plain that the jury found the facts necessary to impose a sentence of death in Brooks's case:

> "Now, as I stated to you before, the burden of proof is on the State to convince each of you beyond a reasonable doubt as to the existence of any aggravating circumstances considered by you in determining what the punishment is to be in the case. This means that before you can even consider assessing that Christopher Eugene Brooks' punishment be death, each and every one of you must be convinced beyond a reasonable doubt based on the evidence that at least one or more of the aggravating circumstances exist."

(C. 1206-07)(emphasis added).

Indeed, Brooks's case is identical to the situation addressed by the Alabama Supreme Court many years ago in Ex parte Waldrop, 859 So. 2d 1181 (Ala. 2002), cert. denied, Waldrop v. Alabama, 540 U.S. 968 (2003).. In that case, the Alabama Supreme Court addressed the effect of Ring on the constitutionality of Alabama's sentencing scheme. There, the defendant had been convicted of two counts of murder during the course of a robbery in the first degree, in violation of Ala. Code, §13A-5-40(a)(2). Id. That Court explained that "[b]ecause the jury convicted Waldrop of two counts of murder during robbery in the first degree...the statutory aggravating circumstance of committing a capital offense while engaged in the commission of a robbery, Ala. Code 1975, §13A-5-49(4), was 'proven beyond a reasonable doubt.'" Id. at 1188 (citing Ala. Code, §13A-5-45(e); Ala. Code, §13A-5-50)). The Court explained that "[o]nly one aggravating circumstance must exist in order to impose a sentence of death." Id. (citing Ala. Code, §13A-5-45(f)). The Court reasoned that, because "the findings reflected in the jury's verdict alone exposed Waldrop to a range of punishment that had as its maximum the death penalty," the State had done "all Ring and Apprendi require." Id.

Nothing has changed to alter the correctness of that decision. As noted above, Hurst did not create new law, but merely applied Ring to peculiarities in Florida law that are not present in Alabama. See Hurst, 2016 WL 112683, at *5

("Like Arizona at the time of Ring, Florida [unlike Alabama] does not require the jury to make the critical findings necessary to impose the death penalty.")

Notably, the Eleventh Circuit has held that Alabama's capital sentencing system is entirely consistent with Ring. Specifically, in Lee v. Commissioner, Alabama Dept. of Corrections, 726 F.3d 1172, 1197-98 (11th Cir. 2013), the Eleventh Circuit held that Alabama law was compliant with Ring because "the jury's guilty verdict on the capital offense of robbery-murder established the existence of an aggravating circumstance sufficient to support a death sentence." As the Eleventh Circuit held, "The holding of Ring is narrow: the Sixth Amendment's guarantee of jury trials requires that the finding of an aggravating circumstance that is necessary to imposition of the death penalty must be found by a jury. That occurred in [Brooks]'s case by virtue of the jury's capital robbery-murder [and burglary-murder and rape-murder verdict[s]." Id. at 1198.

Hurst does not apply to Alabama, and at the very least, it does not entitle Brooks to a stay.

C. Brooks misapprehends the holding of Hurst.

In his petition, Brooks dramatically overextends the holding of Hurst, contending that "[t]his Court's opinion in Hurst holds that the Sixth Amendment does not allow advisory juries in death penalty cases." (Pet. at 7.) Brooks is wrong. Hurst holds no such thing.

As noted above, this Court held that Hurst's sentence was unconstitutional because "[a]s with Ring, a judge increased Hurst's authorized punishment based on her own factfinding." Hurst, 2016 WL 112683, at *5. This Court never held that a judge may not be the final sentencing authority. Rather, Hurst simply reiterated what this Court held in Ring: that a jury must find the necessary facts that render a defendant eligible for the death penalty.

Brooks seizes on the fact that Alabama employs a procedure where the jury first issues a sentencing verdict and then the trial judge issues a final sentencing determination, presumably in an attempt to try to connect Alabama law to Florida law. Not only is Brooks's argument off-point to the holding of Hurst, but it ignores the critical differences in Alabama law and in Brooks's case from Hurst, most importantly, that the jury found the existence of the aggravating circumstances "necessary to impose the death penalty." Hurst, 2016 WL 112683, at *5.

D. Hurst is not retroactive.

If for no other reason, Brooks's request for a stay should be denied because Hurst is not retroactive, and thus, it has no applicability to him. The only way in which this Court can construct a rule's retroactivity is through a holding. Tyler v. Cain, 533 U.S. 656, 663 (2001) ("The only way the Supreme Court can, by itself, 'lay out and construct' a rule's retroactive effect, or 'cause' that effect 'to exist,

occur, or appear,' is through a holding . . . We thus conclude that a new rule is not 'made retroactive to cases on collateral review' unless the Supreme Court holds it to be retroactive.").

This Court made no such holding in Hurst. Even if that case did apply to Alabama law (which it does not), Hurst clearly would have no application to Brooks. As noted above, Brooks's direct appeal was completed long ago, let alone his collateral review. In no way could Hurst apply to Brooks's case.

This conclusion is strengthened even further given the fact that Ring itself—the decision on which Hurst is based—is **not** retroactive. See Schriro v. Summerlin, 542 U.S. 348 (2004). Hurst changes nothing for Brooks. Brooks's sentence is final and his appeals are complete. His sentence is due to be carried out and his request for a stay must be denied.

Brooks concludes his petition with a convoluted request, arguing that this Court should grant a stay of execution pending its decision in Montgomery v. Louisiana, No. 14-280, which, he alleges, will determine whether this Court has jurisdiction to determine whether Hurst has retroactive application. (Pet. at 21-23.)

This argument is fundamentally flawed. The retroactivity issue in Montgomery is absent in Hurst. This Court granted certiorari in Montgomery as to two questions: whether the rule announced in Miller v. Alabama, 132 S. Ct. 2455 (2012), is a substantive rule retroactively applicable to cases on collateral review,

and whether the Court has jurisdiction to determine whether Louisiana correctly refused to give the Miller rule retroactive effect. But unlike Miller, Hurst presents no question as to its non-retroactivity, as discussed above. Therefore, there is no reason for this Court to postpone Brooks's lawful execution until the Court determines whether it has jurisdiction to consider a case involving a question of retroactivity.

Finally, the equities in this case weigh against granting a stay of execution. Brooks would have this Court grant a stay not only until this Court decides Montgomery, but until this Court then decides to address Hurst in relation to Alabama's capital sentencing scheme. This proposed delay is unnecessary and improper. Brooks raped and murdered Jo Deann Campbell on December 31, 1992, and her family has been waiting for justice for more than twenty-three years. As this Court has recognized, "the State and the victims of crime have an important interest in the timely enforcement of a sentence." Hill, 547 U.S. at 584. Brooks's motion for stay of execution and petition for certiorari are due to be denied.

CONCLUSION

Wherefore, for the foregoing reasons, the State of Alabama respectfully requests this Court to deny certiorari review and Brooks's request for a stay of execution.

Respectfully submitted,

Luther Strange
Attorney General

s/ Thomas R. Govan, Jr.
Thomas R. Govan, Jr.
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that on January 20, 2016, a copy of the foregoing was served by facsimile on the attorneys for the Petitioner as listed below:

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EXHIBIT A

IN THE SUPREME COURT OF ALABAMA

January 19, 2016

1951964

Ex parte Christopher Eugene Brooks. PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS (In re: Christopher Eugene Brooks v. State of Alabama) (Jefferson Circuit Court: CC-93-2302; Criminal Appeals: 93-0736).

ORDER

The Petition For Stay Of Execution And Relief From Unconstitutional Sentence filed by Christopher Eugene Brooks on January 15, 2016, having been submitted to this Court,

IT IS ORDERED that the petition is DENIED.

Moore, C.J., and Stuart, Bolin, Parker, Murdock, Shaw, Main, Wise, and Bryan, JJ., concur.

I, Julia Jordan Weller, as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true, and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.

Witness my hand this 19th day of January, 2016.

Julia Jordan Weller

Clerk, Supreme Court of Alabam

cc: D. Scott Mitchell
James H. Hard IV
Charles Allen Flowers
Leslie S. Smith
Virginia A. Vinson
Luther Strange
P. David Bjurberg
James Clayton Crenshaw