

No. _____

**IN THE
SUPREME COURT OF THE UNITED STATES**

GREGORY PAUL LAWLER,

Petitioner,

-v.-

ERIC SELLERS, WARDEN,
Georgia Diagnostic Prison,

Respondent.

On Petition for Writ of *Certiorari*
to the Supreme Court of Georgia

**MOTION FOR A STAY OF EXECUTION
PENDING CONSIDERATION OF PETITION
FOR WRIT OF CERTIORARI TO THE
GEORGIA SUPREME COURT**

CAPITAL CASE: EXECUTION SCHEDULED OCTOBER 19, 2016

TO: THE HONORABLE CLARENCE THOMAS, ASSOCIATE JUSTICE,
SUPREME COURT OF THE UNITED STATES

Petitioner, GREGORY PAUL LAWLER, a death-sentenced prisoner in the State of Georgia, requests that this Court stay his execution, currently scheduled for 7:00 p.m. tonight, Wednesday, October 19, 2016, until further Order of this Court, in order to permit the consideration and disposition of his petition.

PROPOSED QUESTIONS PRESENTED

1. The Eighth Amendment prohibits the execution of offenders whose capacity to make considered, informed judgments, to communicate, and to conform to societal expectations is lessened by their age or disability. *Roper v. Simmons* 543 U.S. 551, 570 (2005); *Atkins v. Virginia*, 536 U.S. 304, 319 (2002). Given the uncontroverted evidence that Petitioner suffers from Autism Spectrum Disorder, a pervasive developmental disorder with those same features, does the Eighth Amendment also prohibit his execution?
2. Does the Georgia capital sentencing scheme—O.C.G.A. § 17-10-30 *et. seq.*—continue to survive constitutional scrutiny?

JURISDICTION

Mr. Lawler invokes this Court's jurisdiction to stay his execution under 28 U.S.C. § 1257 and Rule 23 of the Rules of the Supreme Court of the United States, pending the filing and disposition of a petition for writ of certiorari to the Supreme Court of Georgia.

PROCEDURAL HISTORY

On March 1, 2000, a Georgia jury convicted Petitioner of the malice murder of Atlanta Police Officer John Sowa. Two days later, the same jury sentenced him to death. The Georgia Supreme Court affirmed his sentence on direct appeal on January 27, 2003. *Lawler v. State*, 576 S.E.2d 841 (Ga. 2003), *reh. den.* February 24, 2003. Petitioner filed a timely petition for writ of *certiorari* in this Court, which was denied. *Lawler v. Georgia*, 540 U.S. 934 (2003).

Petitioner then filed a *pro se* petition for writ of habeas corpus in Butts County Superior Court in January 2004. The petition was later amended with the assistance of counsel and a hearing was held on the petition as amended. The

Superior Court entered an order denying relief on all claims on December 5, 2008. The Georgia Supreme Court denied Petitioner's application for a certificate of probable cause to appeal on June 7, 2010. This Court thereafter denied a timely-filed petition for writ of *certiorari* on November 8, 2010. *Lawler v. Hall*, 562 U.S. 1031 (2010).

Petitioner then filed a petition for writ of habeas in the United States District Court for the Northern District of Georgia, which denied the petition on April 2, 2014. The United States Court of Appeals for the Eleventh Circuit affirmed the district court's opinion on December 10, 2015. *Lawler v. Warden*, 631 Fed. Appx. 905 (11th Cir. 2015) (unpublished).

On July 7, 2016, Petitioner again sought a writ of *certiorari* from this Court. His petition was denied on October 3, 2016. *Lawler v. Chatman*, ___ S. Ct. ___, 2016 WL 4082979 (2016).

On October 5, 2016, the Superior Court of Fulton County entered an order directing the Department of Corrections to execute Gregory Lawler during a time period beginning at noon on October 19, 2016 and concluding at noon on October 26, 2016. The Department of Corrections scheduled Petitioner's execution for 7:00 p.m. on Wednesday, October 19, 2016.

On October 18, 2016, Petitioner filed a Petition for Writ of Habeas Corpus in the Superior Court of Butts County, Georgia raising the claims that are the subject of the instant petition for writ of *certiorari* to the Supreme Court of Georgia. That Court denied the Petition on October 19, 2016. The Georgia Supreme Court denied

Petitioner's application for a certificate of probable cause to appeal that order on October 19, 2016. Petitioner has filed together herewith a petition for writ of *certiorari* to the Supreme Court of Georgia.

REASONS FOR GRANTING A STAY

In order to receive a stay of execution, a petitioner must show: 1) irreparable injury if no stay is granted; 2) a "reasonable probability that four (4) members of the Court will consider the issue [presented] sufficiently meritorious to grant certiorari," *Graves v. Burnes*, 405 U.S. 1201 (1972) (POWELL, Circuit Justice), or a reasonable probability that a plurality of the Court would grant relief on an original habeas petition; and 3) a likelihood of success on the merits. *See Barefoot v. Estelle*, 463 U.S. 880, 893 (1983); *see also Fare v. Michael C.*, 439 U.S. 1310 (1978) (REHNQUIST, Circuit Justice). Mr. Lawler respectfully submits that he meets this standard.

A. Irreparable Injury

If this Court does not grant a stay, Mr. Lawler will be executed at 7:00 p.m. tonight, October 19, 2016. This clearly 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 "obvious 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).

Further, Mr. Lawler's claims address whether the Eighth and Fourteenth

Amendments continue to permit the death penalty as currently administered in Georgia. The potential injury is not only his death, but the application of a punishment now considered to be cruel and unusual punishment by the citizens of the United States. Given these facts and concerns, a stay of execution will not prejudice the State.

B. Probability That The Court Will Grant The Writ, and Likelihood of Success

The petition accompanying the instant motion presents a question of the utmost constitutional importance. There is a reasonable likelihood that this Court would grant *certiorari* in order to address the death penalty's continued constitutionality and that Mr. Lawler would ultimately prevail on the merits of his petition, and that his sentence would be declared illegal.

In the petition for a writ of *certiorari*, Mr. Lawler has raised serious constitutional infirmities that undermine the constitutionality of the capital sentencing scheme as a whole. Accordingly, there is a reasonable likelihood of success in proving his Eighth Amendment claim. If "the petition demonstrates a likelihood of success in at least some respects," a court should grant a stay. *Bundy v. Wainwright*, 808 F.2d 1410, 1421 (11th Cir. 1987). Mr. Lawler's case involves issues that are, at a minimum, "debatable among jurists of reason"; which "a court could resolve in a different manner"; and which involve "questions [that] are 'adequate to deserve encouragement to proceed further.'" *Barefoot v. Estelle*, 463 U.S. 880, 893 n. 4. (1983) (citations omitted).

CONCLUSION

Wherefore, Mr. Lawler respectfully requests an Order staying his execution pending consideration of his petition for writ of certiorari to the Supreme Court of Georgia.

Respectfully submitted this, the 19th day of October, 2016.

/s/ Gerald W. King
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