

No. 17-

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2017

KEITH THARPE,

Petitioner,

-v-

ERIC SELLERS, Warden,
Georgia Diagnostic Prison,

Respondent.

**CAPITAL CASE: EXECUTION SCHEDULED
FOR SEPTEMBER 26, 2017 @ 7:00 PM**

MOTION FOR STAY OF EXECUTION

Comes now, Petitioner, KEITH THARPE, by and through undersigned counsel, and prays that an Order be entered staying the execution of his sentence of death until further Order of this Court, and in support of his application, respectfully states as follows:

1. Petitioner filed the instant action on September 23, 2017, requesting that this Court grant review of the order of the Eleventh Circuit U.S. Court of Appeals (Case No. 17-14027-P) denying a Certificate of Appealability of the district court's denial of relief under F.R.C.P. 60(b)(6).

2. The State of Georgia has now scheduled Petitioner's execution for September 26, 2017, at 7:00 PM. Petitioner requests that the execution be stayed by this Court until the Petition for Writ of Certiorari is considered and finally acted upon.

3. The Superior Court of Jones County, State of Georgia, set from noon on September 26, 2017 and noon on October 3, 2017, as the period during which Petitioner's execution may be carried out. *See* Exhibit A (execution warrant), attached. The execution is currently scheduled for September 26, 2017, at 7:00 PM.

4. A stay of execution is justified on the grounds that Petitioner faces imminent execution despite the fact that one of his jurors harbored virulently racist views about African American people which influenced his vote to sentence Petitioner to death. Petitioner raised this claim and perfected the evidentiary record 20 years ago in state post-conviction proceedings but the state courts foreclosed relief under Georgia law prohibiting consideration of juror testimony, even regarding racial bias, which "impeaches" the verdict. Recent decisions of this Court in *Pena-Rodriguez v. Colorado*, 137 S. Ct. 855 (2017) and *Buck v. Davis*, 137 S. Ct. 759 (2017) have finally provided a clear avenue to relief for the kind of gross injustice Mr. Tharpe has alleged, but the lower courts denied relief. Under these circumstances, Petitioner's execution would be a grotesque miscarriage of justice.

5. Petitioner is detained at the Georgia Diagnostic Prison, at Jackson, Georgia, under a sentence of death. A stay of execution will not prejudice the State of Georgia or interfere with Petitioner's custodial status.

6. A stay of execution is necessary to ensure that Petitioner is not executed before this Court is able to resolve the matters contained in the Petition for Writ of Certiorari. The execution of Petitioner would obviously inflict irreparable harm.

WHEREFORE, Petitioner respectfully requests an Order staying Petitioner's execution, pending resolution of the proceedings and further Order of this Court.

This 23rd day of September, 2017.

BRIAN S. KAMMER (*counsel of record*)
Georgia Resource Center
303 Elizabeth Street, NE
Atlanta, Georgia 30307
(404) 222-9202



By: _____

COUNSEL FOR PETITIONER

Exhibit A

IN THE SUPERIOR COURT OF JONES COUNTY
STATE OF GEORGIA

2017 SEP -5 AM 11:23
JL
SUPERIOR COURT

STATE OF GEORGIA,

* CASE NO.
* 10826

v.

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KEITH LEROY THARPE,
Defendant.

ORDER

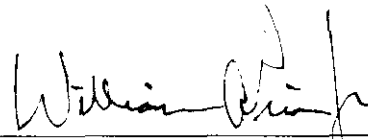
The Court having sentenced Defendant, Keith Leroy Tharpe, on the 10th day of January, 1991, to be executed by the Department of Corrections at such penal institution as may be designated by said Department, in accordance with the laws of the State of Georgia, and;

The date for the execution of said Keith Leroy Tharpe, having passed by reason of supersedeas incident to appellate review;

IT IS CONSIDERED, ORDERED, AND ADJUDGED by this Court, pursuant to O.C.G.A. § 17-10-40, that within a time period commencing at noon on the 26th day of September, 2017 and ending seven days later at noon on the 3rd day of October, 2017, the Defendant, Keith Leroy Tharpe, shall be executed by the Department of Corrections at such penal institution and on such a date and time within the aforementioned time period as may be designated by said Department in accordance with the laws of the State of Georgia.

It is FURTHER ORDERED that the Clerk of the Superior Court of Jones County, Georgia shall record this order on the minutes of the court and shall cause a certified copy of this Order for execution of the original sentence to be served immediately to the Attorney General of Georgia, the Ocmulgee Judicial Circuit District Attorney, the Commissioner of the Georgia Department of Corrections, the Warden of the Georgia Diagnostic and Classification Prison, and Defendant's last known attorney of record.

This 6th day of September, 2017.



WILLIAM A. PRIOR, JR.
CHIEF JUDGE, SUPERIOR COURT
OCMULGEE JUDICIAL CIRCUIT

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CERTIFICATE OF SERVICE

This is to certify that I have served this 23rd day of September a copy of the foregoing document this day by hand delivery/electronic mail, on counsel for Respondent at the following address:

Sabrina Graham, Esq.
Senior Assistant Attorney General
40 Capitol Square, S.W.
Atlanta, Georgia 30334-1300
sgraham@law.ga.gov



Attorney