

NO. 07A918
IN THE UNITED STATES SUPREME COURT

OCTOBER 2007 TERM

EARL WESLEY BERRY,

Petitioner

versus

STATE OF MISSISSIPPI,

Respondents

**RESPONSE TO MOTION FOR STAY OF EXECUTION
PENDING CONSIDERATION OF AN ORIGINAL
PETITION FOR WRIT OF HABEAS CORPUS**

COMES NOW the Respondent, by and through counsel, and files this response in opposition to the motion for stay of execution in this case.

For the reasons stated in the response to the original petition for writ of habeas corpus filed this day in *In re Berry*, No. 07-11019, the Respondent would assert that petitioner is not entitled to a stay of execution in this case as all claims presented to the state court below were presented and decided in a prior habeas petition and this petition represents a successive habeas petition barred by the provisions of 28 U.S.C. § 2244(b)(1).

Respondent would assert that the last minute nature of this argument in this case militates against granting a stay of execution pending consideration of the original petition for writ of habeas corpus.

CONCLUSION

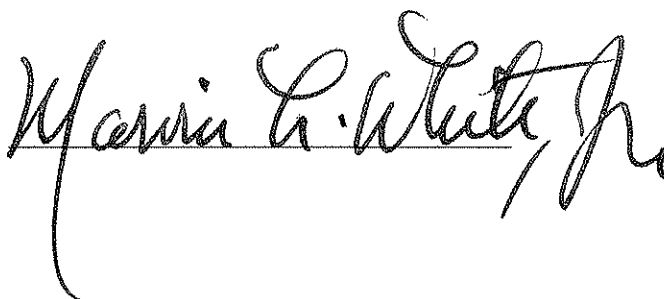
For the reasons stated above, respondent would assert that the requested stay of execution should be denied.

Respectfully submitted,

JIM HOOD
ATTORNEY GENERAL
STATE OF MISSISSIPPI

MARVIN L. WHITE, JR.
ASSISTANT ATTORNEY GENERAL
Miss. Bar No. 7149
Counsel of Record

BY:

A handwritten signature in cursive script, reading "Marvin L. White, Jr.", written over a horizontal line. The signature is positioned to the right of the word "BY:".

OFFICE OF THE ATTORNEY GENERAL
Post Office Box 220
Jackson, Mississippi 39205
Telephone: (601) 359-3680

CERTIFICATE

I, Marvin L. White, Jr., Assistant Attorney General for the State of Mississippi, hereby certifies that I have this day caused to be mail, first-class postage prepaid, a true and correct copy of the foregoing RESPONSE TO MOTION FOR STAY OF EXECUTION PENDING CONSIDERATION OF A PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI, further counsel hereby certifies that he has also emailed a PDF copy of the same to the following:

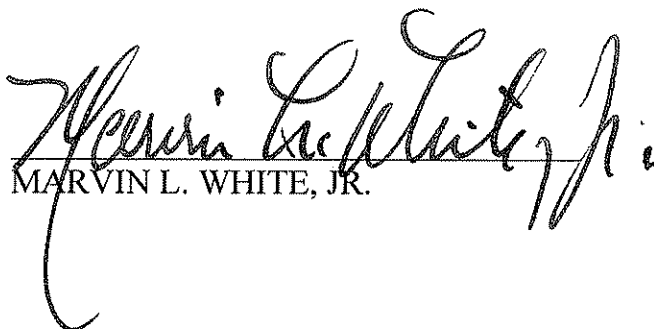
Kwaku A. Akowuah, Esquire
Daniel B. Kirschner, Esquire
Mayer Brown LLP
1675 Broadway
New York, New York 10019
aschapiro@mayerbrown.com

James W. Craig, Esquire
Justin Matheny, Esquire
Phelps Dunbar LLP
111 E. Capitol Street, Suite 600
Jackson, Mississippi 39201
craigj@phelps.com, mcalpins@phelps.com, michael.richmond@phelps.com,
mathenyj@phelps.com, bookert@phelps.com

David P. Voisin, Esquire
P.O. Box 13984
Jackson, Mississippi 39236-3984
davidvoisin@comcast.net

James M. Priest, Jr., Esquire
Gill, Ladner & Priest, PLLC
403 South State Street
Jackson, Mississippi 39201
jamesmpriest@yahoo.com

This the 20th day of May, 2008.


MARVIN L. WHITE, JR.