

No. 07-_____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2007

WILLIAM EARL LYND,

Petitioner,

-v-

HILTON HALL, Warden
Georgia Diagnostic Prison,

Respondent.

**REPLY TO RESPONDENT'S RESPONSE IN OPPOSITION
TO PETITION FOR WRIT OF CERTIORARI AND MOTION FOR STAY**

Petitioner, William Earl Lynd, through undersigned counsel, respectfully submits this Reply to Respondent's Response in Opposition to Mr. Lynd's Petition for Certiorari and Motion for Stay of Execution.

A. Mr. Lynd's Case Presents a Federal Question, and the Supreme Court of Georgia Addressed the Merits of His Federal Question as Evidenced By Court's Order Asking for Merits Briefing.

Respondent contends that Mr. Lynd's Petition fails to present a federal question, as "it is clear that the decision of the Georgia Supreme Court rested on adequate and independent state grounds and certiorari review should be denied." Response in Opposition at 20. Respondent further argues that "the Georgia Supreme Court reviewed Petitioner's motion for stay of

execution and application for probable cause to appeal and denied both the motion and the application in a summary opinion, which clearly did not address the ‘merits.’” Id. Respondent ignores the Supreme Court of Georgia’s Order entered before Mr. Lynd filed any pleadings with that court, asking for merits briefing on his federal constitutional claims for relief.

In that Order, the Supreme Court of Georgia unequivocally directed both parties to address the merits of the Mr. Lynd’s federal constitutional claims for relief. The Supreme Court of Georgia asked the parties to address two questions which went to the heart of the merits of Mr. Lynd’s constitutional claims:

- 1) What impact, if any, should State’s Exhibit 25 from the trial record have on this Court’s consideration of Lynd’s case?
- 2) What impact, if any, should the trial testimony contained on pages 1,668 – 1,679 have on this Court’s consideration of Lynd’s case?

Lynd v. Hall, Order dated May 2, 2008 (See Attachment). Mr. Lynd clearly answered the court’s questions, which answers further established that his eligibility for death was based on “materially inaccurate” evidence. Johnson v. Mississippi, 406 U.S. 578 (1988).

The May 2 Order, more than the Supreme Court of Georgia’s summary denial Order of May 6, 2008, evidences that the court considered the merits of the Mr. Lynd’s claims. The Supreme Court of Georgia’s Order of May 2, 2008, asking for merits briefing undermines any claim that the court observed an independent and adequate state ground in denying relief. Mr. Lynd’s petition presents a significant federal question warranting a stay of execution and this Court’s review.

B. Mr. Lynd was Sentenced to Death “Based on the Jury’s Consideration of False, but Highly Persuasive, Evidence.”¹

In Brown v. Farwell, the 9th Circuit Court of Appeals recently confronted an equally disturbing scenario, but made the right call. In that case, a DNA analyst testified at trial that Brown was “99.99967 percent likely to be guilty.” 2008 WL 1931250 at *7. However, that conclusion “was based on her scientifically flawed DNA analysis, which means that [Brown] was most probably convicted based on the jury’s consideration of false, but highly persuasive, evidence.” Id. “[The analyst]’s testimony was unreliable, as it was inaccurate” and that “violated [Brown]’s due process rights.” Id. The court of appeals granted relief.

In a materially identical scenario in Mr. Lynd’s case, the Georgia Supreme Court has made the opposite call, and that court’s flawed decision may now allow a man to be executed based on a fake doctor’s manifestly and undisputedly false and misleading testimony that a woman shot in the brain could have revived and struggled painfully before being dealt a final, cold-blooded shot to the head by Mr. Lynd. Had a competent medical professional informed the jury that in fact, Ms. Moore immediately died after being shot in the brain during her fight with Mr. Lynd, there would have been no evidence to support the kidnapping aggravator or the prosecutor’s inflammatory argument that Ms. Moore died a lingering, torturous death, which came when a cold, calculating William Lynd fired the final, fatal shot. It simply could not have happened that way. Because the jury heard otherwise, Mr. Lynd’s death sentence cannot be said, by any stretch of distorted moral or legal logic, to be fair, accurate and reliable. Johnson v. Mississippi, supra. Had Mr. Lynd been subject only to the remaining statutory aggravator in this case – aggravated battery – it is overwhelmingly likely that he would not have been sentenced to

¹ Brown v. Farwell, ___ F.3d ___, 2008 WL 1931250 at *7 (9th Cir. 2008).

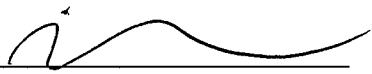
death. In Georgia, only one other person has ever had a death sentenced affirmed based solely on the aggravated battery aggravator, and that involved the murder of a child. See Wade v. State, 261 Ga. 105 (1991).

This case raises the kind of concern Justice Stevens expressed in Baze v. Rees, 128 S.Ct. 1520 (2008). To paraphrase: “[a] serious concern is that the risk of error in capital cases may be greater than in other cases because the facts are often so disturbing that the interest in making sure the crime does not go unpunished may overcome residual doubt concerning the” eligibility for the death sentence. 128 S.Ct. at 1550 (Stevens, J., dissenting).

CONCLUSION

This Court should grant the Petition for Writ of Certiorari in order to correct the Georgia Supreme Court’s erroneous determinations of law and fact.

Respectfully submitted,


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COUNSEL FOR PETITIONER

Attachment

**SUPREME COURT OF GEORGIA**

Atlanta May 2, 2008

The Honorable Supreme Court met pursuant to adjournment.

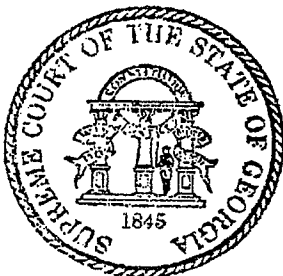
The following order was passed.

WILLIAM EARL LYND v. HILTON HALL, WARDEN

Having been informed by counsel for William Earl Lynd that he intends to file an application for certificate of probable cause to appeal concerning his petition for writ of habeas corpus filed in the Superior Court of Butts County, this Court hereby directs the parties to each file a brief in this Court Clerk's office by noon on May 5, 2008, addressing the following questions:

What impact, if any, should State's Exhibit 25 from the trial record have on this Court's consideration of Lynd's case?


What impact, if any, should the trial testimony contained on pages 1,668-1,679 have on this Court's consideration of Lynd's case?



SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

 , Chief Deputy Clerk

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CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing document this day by hand delivery on counsel for Respondent at the following address:

Susan V. Boleyn, Esq.
Senior Assistant Attorney General
132 State Judicial Building
40 Capitol Square, S.W.
Atlanta, Georgia 30334-1300

This the 6th day of May, 2008.



Attorney