

CAPITAL CASE

SEP 23 2008

EXECUTION DATE

FILED

SEP 17 2008

OFFICE OF THE CLERK
SUPREME COURT, U.S.

NO. 08A-241

IN THE SUPREME COURT OF THE UNITED STATES

TROY ANTHONY DAVIS,

Petitioner,

v.

STATE OF GEORGIA,

Respondent.

RESPONSE IN OPPOSITION TO MOTION TO STAY EXECUTION

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**RESPONSE IN OPPOSITION TO MOTION FOR
STAY OF EXECUTION**

Comes now, Respondent, State of Georgia, by and through counsel, Thurbert E. Baker, Attorney General of the State of Georgia, and files this response in opposition to Petitioner's motion for a stay of execution pending resolution of Petitioner's petition for writ of certiorari seeking review of the Georgia Supreme Court's order affirming the denial of Petitioner's extraordinary motion for new trial, by showing and stating the following:

Petitioner has failed to set forth any basis for granting a stay of execution based on his pending petition for a writ of certiorari filed in this Court on July 14, 2008. As set forth in Respondent's previously filed response in opposition to the petition for a writ of certiorari, certiorari review is not warranted in this case, as the decisions of the lower courts were based solely on state law governing the review of extraordinary motions for new trial. Additionally, the Georgia Supreme Court expressly declined to reach any federal questions, including those implicating any potential due process or liberty interest concerns, by stating that, "We must point out that, contrary to the dissent's implication

otherwise, this opinion does not hold and nowhere states that recantations and confessions must be categorically excluded and never considered in cases such as this. Nor do we hold that a trial court has no right to hold a hearing to consider the evidence with which it has been presented. We simply hold that, in dealing with the evidence and in its decision not to hold a hearing, the trial court did not abuse the discretion with which it is empowered by law under the facts of this case." Davis v. State, 283 Ga. 438, 439 (2008).¹

Therefore, since Petitioner's petition for writ of certiorari fails to present any "substantial legal and constitutional errors," as alleged by Petitioner, no stay of execution is warranted merely to consider the Georgia Supreme Court's interpretation of state precedent governing extraordinary motions for new trial.

¹Respondent incorporates by reference herein the brief in opposition to certiorari which was filed on August 14, 2008. See Davis v. State of Georgia, Case No. 08-66.


CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel for the opposing party in the foregoing matter with a copy of this pleading by facsimile and U.S. Mail:

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This 17th day of September, 2008.



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