

No. 08-66

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2008

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TROY ANTHONY DAVIS,

Petitioner,

-v-

STATE OF GEORGIA,

Respondent.

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MOTION FOR STAY OF EXECUTION PENDING  
PETITION FOR WRIT OF CERTIORARI  
TO THE SUPREME COURT OF THE UNITED STATES

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Comes now Petitioner, TROY ANTHONY DAVIS, by and through his 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. On September 3, 2008, the Superior Court of Chatham County, State of Georgia, issued an execution warrant setting the window for Petitioner's execution from noon on Tuesday, September 23, 2008 through noon on Tuesday, September 30, 2008 as the period during which Petitioner's execution would be carried out. (A copy of the Order is attached as Exhibit "A"). The date of Petitioner's scheduled execution is September 23, 2008 at 7:00PM.

2. On September 15, 2008, Petitioner filed a motion for stay of execution in the Supreme Court of Georgia. The motion is currently pending before the court.

3. As stated in his Petition for Certiorari, Petitioner appeals the constitutionality of the 4-3 decision of the Supreme Court of Georgia to deny Mr. Davis his Extraordinary Motion for New Trial and allow his execution to proceed without an evidentiary hearing.

4. A stay of execution is justified on the grounds that Petitioner's counsel has filed in this Court a Petition for Writ of Certiorari presenting substantial legal and constitutional errors which have occurred in connection with Petitioner's Extraordinary Motion for New Trial and sentence of death.

5. Petitioner is detained at the Georgia Diagnostic Prison, at Jackson, Georgia, under a sentence of death. A Stay of Execution will in no way prejudice the State of Georgia or interfere with Petitioner's custodial status.

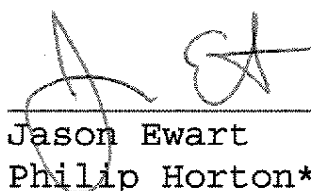
6. A Stay of Execution is necessary to insure that Petitioner is not executed before this Court is able to

hear and determine 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.

Dated: September 16, 2008

Respectfully submitted,



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Jason Ewart  
Philip Horton\*  
Danielle Garten  
Arnold & Porter LLP  
555 12th St. NW  
Washington, DC 20004  
Phone: (202) 942-6616  
Facsimile: 202-942-5999

Counsel for Petitioner

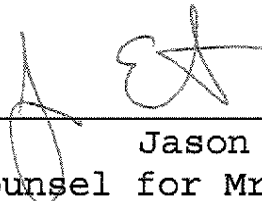
\*Counsel of Record

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing pleadings upon Respondent by facsimile and third-party commercial carrier, addressed as follows:

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

This the 16th day of September, 2008.

  
\_\_\_\_\_  
Jason Ewart  
Counsel for Mr. Davis

IN THE SUPERIOR COURT OF CHATHAM COUNTY  
STATE OF GEORGIA

FILED IN OFFICE  
2008 SEP -3 AM 10:10  
*Dwight Starnes*  
CLERK, SUPERIOR COURT  
CHATHAM COUNTY, GA

THE STATE OF GEORGIA

\*

CRIMINAL NO.

V.

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089-2467-H

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\*

TROY ANTHONY DAVIS,

\*

Defendant

\*

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ORDER

The Court having sentenced Defendant, Troy Anthony Davis, on the 3<sup>rd</sup> day of September, 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 Troy Anthony Davis, 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 23<sup>rd</sup> day of September, 2008 and ending seven days later at noon on the 30<sup>th</sup> day of September, 2008, the Defendant, Troy Anthony Davis, 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.

ENTERED NG SEP - 3 2008

It is FURTHER ORDERED that the Clerk of the Superior Court of Chatham 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 Eastern 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.

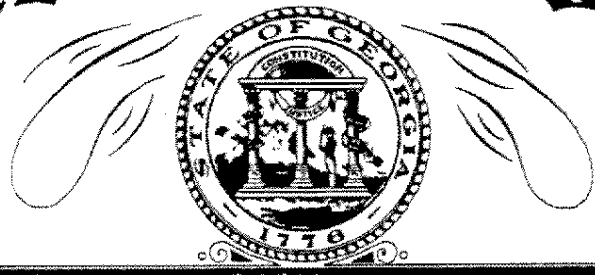
This 3<sup>rd</sup> day of September, 2008.

A handwritten signature in black ink, appearing to read 'Penny Haas Freesemann', written over a horizontal line.

PENNY HAAS FREESEMANN\*  
JUDGE, SUPERIOR COURT  
EASTERN JUDICIAL CIRCUIT

\* In lieu of the Honorable James W. Head, who originally sentenced Defendant and is now retired from the Eastern Judicial Circuit.

# State of Georgia



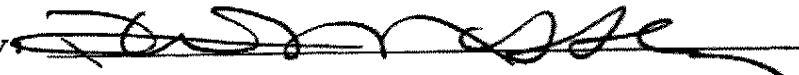
## OFFICE OF CLERK OF SUPERIOR COURT

I, DANIEL W. MASSEY, CLERK OF SUPERIOR COURT OF CHATHAM COUNTY, GEORGIA, do hereby certify that the above and foregoing pages are true and correct copies of that certain ORDER in the case of STATE OF GEORGIA V. TROY ANTHONY DAVIS\*\*\*\*\*

\*\*\*\*\*the same being CRIMINAL NUMBER 089-2467-H having been filed and made a part of the official record of this office, of which I am the official custodian, as authorized by Georgia Law.

Witness my hand and the official seal of this office, on this

3RD day of SEPTEMBER 2008

By:  /Deputy  
DANIEL W. MASSEY, CLERK