



**SUPREME COURT OF GEORGIA**

Case No. S09W0075

Atlanta September 22, 2008

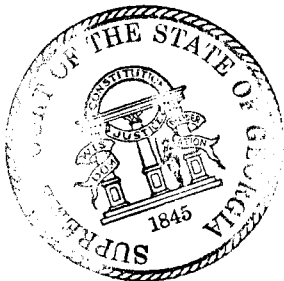
The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

**TROY ANTHONY DAVIS v. THE STATE**

From the Superior Court of Chatham County.

Davis has filed a motion for a stay of execution to allow the Supreme Court of the United States to consider his petition for a writ of certiorari arising out of this Court's affirmance of the trial court's denial of his extraordinary motion for a new trial. Because the Supreme Court of the United States rather than this Court properly has jurisdiction over Davis's pending petition for a writ of certiorari and because it appears that Davis has already filed in that Court a motion for a stay of execution, his motion for a stay of execution filed in this Court is denied. All the Justices concur, except Benham, J., who dissents.



**SUPREME COURT OF THE STATE OF GEORGIA**

Clerk's Office, Atlanta

I hereby 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.

*Theresa J. Baume*, Clerk

S09W0075. DAVIS v. THE STATE.

SEARS, Chief Justice, concurring.

I dissented to this Court's judgment affirming the habeas court's denial of an evidentiary hearing on Davis's extraordinary motion for new trial.<sup>1</sup> I still believe that Davis is entitled to that hearing. Nevertheless, this case is currently pending before the United States Supreme Court on Davis's petition for certiorari, and jurisdiction is properly in the Supreme Court, not this Court. Accordingly, I concur in the Court's decision to deny Davis's application for a stay of execution.

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<sup>1</sup>Davis v. State, 283 Ga. 438, 448-450 (660 SE2d 354) (2008) (Sears, C.J., dissenting).