No. 17-7505

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2017

VERNON MADISON, Petitioner,

v.

STATE OF ALABAMA, Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE MOBILE COUNTY CIRCUIT COURT

CAPITAL CASE

STATE OF ALABAMA'S OPPOSITION TO MADISON'S APPLICATION FOR A STAY OF EXECUTION

In matters of equity, this Court has generally protected a state's interest in the enforcement of its criminal judgments when an inmate has obviously attempted to manipulate litigation to obtain a stay. *See Gomez v. United States Dist. Ct. for the N. Dist. of Cal.*, 503 U.S. 653 (1992) (per curiam). There can be no greater effort at manipulation than that which leads Madison before this Court for the second time in two months. As shown below, equity demands that Alabama's interest in the execution of Madison's sentence be protected against the manipulative efforts represented by his petition and motion for a stay.

Vernon Madison is not insane, nor does he contend that he is insane. Yet, he seeks a stay of execution to permit the Court to review the denial of a petition filed

pursuant to a state statute that applies solely to a prisoner's sanity.[1] ALA. CODE § 15-16-23 (1975). This fact alone warrants denial of the requested stay based on the low probability of success on the merits of Madison's petition. The state circuit court could not have erred by finding that Madison did not establish a threshold showing that he was insane, especially where Madison does not contend otherwise and the statute governing the petition is concerned with no other subject than sanity.

Additionally, the facts and legal argument presented in Madison's petition were presented to this Court and rejected less than three months ago. *Dunn v. Madison*, 138 S. Ct. 9 (2017). Less than one month ago, this Court rejected Madison's application for rehearing, which alleged (1) that the absence of state court appellate review warranted application of a different standard of review, and (2) that full briefing was warranted because the State had requested an execution date. Pet. for Rehearing, Dunn v. Madison, No. 17-193 (Nov. 16, 2017). Now, Madison alleges (1) that the absence of state court appellate review warrants this Court's attention freed from the habeas standard of review (Appl. for Stay 4-5), and (2) that a stay is warranted to permit full briefing in the light of Madison's scheduled execution (Appl. for Stay 5-6). In short, Madison presents nothing substantially different in this second iteration.

[1] Madison acknowledges that this statute governs competency claims related to a prisoner's sanity. (Appl. for Stay 4 n.3.)

It is true that this Court's prior review was constrained by the Anti-terrorism and Effective Death Penalty Act of 1996. Neither the State nor this Court is responsible for that fact. Madison made the choice to appeal the denial of his first insanity petition by way of the federal writ of habeas corpus. He cannot now reasonably claim surprise that *his* chosen method of appealing *his* insanity petition invoked the AEDPA standard of review.

As noted in the State's brief in opposition, multiple grounds of preclusion should bar consideration of the questions Madison presents for review. Even though the Court declined to address the merits of Madison's claim outside of the AEDPA context (Appl. for Stay 3), it nonetheless addressed the merits of his claim (as opposed to addressing an exhaustion defense or an adequate-and-independent-state-law basis supporting affirmance). For purposes of issue and claim preclusion, Madison's claim received one complete round of federal review on the merits. Had Madison wished to have the merits of his claim reviewed outside of the confines of the AEDPA, he could have pursued certiorari in this Court following his 2016 state competency proceedings as he does now.

Granted, Madison's latest petition includes allegations about the court-appointed expert's arrest on drug charges after the 2016 competency hearing. (Appl. for Stay 3-4.) But even if this issue had not been injected into the prior habeas proceedings,[2] it would not defeat application of these grounds of preclusion. Neither question Madison presents for review pertains to the impeachment of an expert

[2] It was. Pet. for Rehearing, Dunn v. Madison, No. 17-193 (Nov. 16, 2017).

witness or the scope of a trial court's discretion to rely on a defense expert's testimony as an indication of a fair hearing. Perhaps application of claim or issue preclusion would be unreasonable if Madison's petition presented questions related to expert assistance or the impeachment of expert witnesses, but where the questions presented were previously in front of the Court as recently as January 7, 2018, the application of claim and issue preclusion to this case is entirely reasonable.

Madison's effort to delay his execution by seeking review of the denial of a successive state court petition, alleging incompetence based on the same evidence and legal argument previously rejected, should not be viewed any differently than how this Court views a second or successive federal habeas petition. *See Delo v. Stokes*, 495 U.S. 320, 321 (1990) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 895 (1983)) (per curiam) ("A stay of execution pending disposition of a second or successive federal habeas petition should be granted only when there are 'substantial grounds upon which relief might be granted.'"). Because no reasonable person could maintain that Madison appears before this Court in a procedural posture permitting the presentation of substantial grounds on which relief might be granted, the stay he seeks should be denied.

Finally, this Court's precedent counsels against granting a stay of execution because the procedural obstacles identified by the State permit disposition of Madison's petition prior to Thursday, January 25, 2018. In *In re Blodgett*, 502 U.S. 236, 239 (1992), this Court was concerned with the impact of a two-and-one-half-year stay of execution on the State of Washington's sovereign power to enforce its criminal

laws. There, the delay was caused by the failure of the Ninth Circuit to expedite review of Blodgett's second (successive) habeas petition. Here, Madison was granted a federal stay of execution by the Eleventh Circuit in May 2016, which caused the State's first death warrant to expire. This Court left that stay of execution intact so that Madison could obtain full federal review of his claim. Thus, Madison was under a de facto stay of execution until this Court denied his habeas claim last November. If a stay were granted on his second (successive) competency claim, it is fair to assume that federal interference with the State of Alabama's sovereign power to enforce its criminal laws will far exceed the delay caused by the Ninth Circuit in *Blodgett*. Rather than grant the requested stay, *Blodgett* counsels that this Court should expedite review and dismiss the petition on an appropriate procedural ground. *Id*. at 239-40.

CONCLUSION

In the light of the above-mentioned considerations, the State of Alabama asks that Madison's application for a stay of execution be denied.

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BY—

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