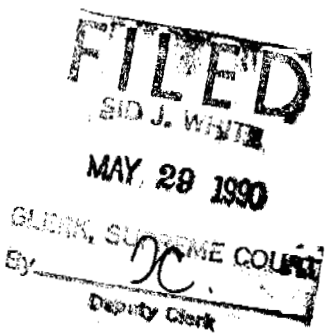
IN THE SUPREME COURT OF FLORIDA

CASE NO. 76,039



JIM ERIC CHANDLER,

Petitioner.

vs.

RICHARD L. DUGGER, Secretary,
Department of Corrections, State of Florida,

Respondent.

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RESPONSE TO PETITION FOR EXTRAORDINARY RELIEF AND FOR A WRIT OF HABEAS CORPUS

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COMES NOW Respondent, Richard L. Dugger, by and through undersigned counsel and files this response to Petitioner's writ and motion for stay of execution;

PROCEDURAL HISTORY

Petitioner's conviction was upheld on his first direct appeal but the case was remanded for resentencing. Chandler v. State, 442 So.2d 171 (Fla. 1983). Petitioner's second death sentence was affirmed on his second direct appeal. Chandler v. State, 534 So.2d 701 (Fla. 1988). The United States Supreme Court denied certiorari on May 15, 1989. The Governor signed Petitioner's death warrant on April 30, 1990. This petition follows.

STATEMENT OF THE CASE AND FACTS

Respondent relies on the facts as outlined by this Court in Petitioner's first direct appeal. Chandler v. State, 442 So.2d 171 (Fla. 1983).

The symbol SR denotes the record from Petitioner's second direct appeal.

I

ARGUMENT

RESPONSE TO REQUEST FOR STAY OF EXECUTION AND FOR ADDITIONAL TIME TO AMEND OR SUPPLEMENT THIS PETITION

Petitioner asks this Court to grant a stay of execution because the Office of the Capital Collateral Representative has been unable to conduct any research or investigation into Petitioner's case.

A stay of execution should not be regarded as an automatic remedy simply upon request, Mulligan v. Zant, 531 F. Supp. 459, 460 (M.D. GA. 1984), inasmuch as the State has a legitimate interest in the finality of litigation including capital litigation. Witt v. State, 387 So.2d 925 (Fla.1980), cert. denied, 449 U.S. 1067 (1981). In other words "justice, though due the accused, is due to the accuser also," Snyder v. Massachusetts, 291 U.S. 97, (1934), and justice delayed is justice denied, United States ex rel. Geisler v. Walters, 510 F.2d 887, 893 (3rd Cir. 1975).

Although Petitioner's counsel claims to have had little time to prepare and present argument it should be noted that Petitioner's direct appeal has been final since May 15, 1989 when the United State's Supreme Court denied certiorari. It should also be noted that Petitioner has already presented to this Court twenty eight issues spanning two direct appeals. Chandler v. State, 442 So.2d 171 (Fla. 1983); Chandler v. State, 534 So.2d 701 (Fla. 1988). The fact that no meritorious claims have been uncovered to warrant a permanent reversal of Petitioner's conviction and sentence is not an automatic assumption that any in fact due exist but simply remained

undetected due to these alleged time constraints. Petitioner has failed to demonstrate the need to for a stay of execution. Troedel v. State, 479 So.2d 736,737 (Fla. 1985).

Also without merit is Petitioner's claim that the Governor has prematurely signed a death warrant irrespective of the two year time limits attached to post conviction litigation. Petitioner mistakenly assumes that his Rule 3.850 motion is "not due" until well into 1991. Petitioner's prior counsel filed a motion for post - conviction relief which was later dismissed without prejudice (SR 117-134). The time limitations imposed on a collateral defendant for the filing of any post conviction motions should not be construed as a guarantee that death row inmates get an automatic two year reprieve once their direct appeal has become final. The two year limitation is meant to encourage filing of such claims before expiration of the two year period. It is not a bar to execution of sentence immediately after it has become final. Cave v. State, 529 So.2d 293,299 (Fla.1988); Correll v. Dugger, 15 FLW 147 (Fla. March 16, 1990); Smith v. Dugger, 15 FLW 81,83 f.n.3 (Fla. February 15, 1990).

II

THE PENALTY PHASE JURY INSTRUCTIONS ARE A CORRECT STATEMENT OF FLORIDA'S SENTENCING PROCEDURE AS WELL AS CONSTITUTIONALLY PERMISSIBLE

Petitioner claims that the standard jury instructions create an impermissible presumption that death is the appropriate

penalty. The argument further alleges that this impermissible presumption shifts the burden of proof to Petitioner to prove that death is not the appropriate sentence and precludes consideration of mitigating evidence.

Initially it should be pointed out that Petitioner is barred from raising this claim as there was never any objection at trial nor was this claim raised in either of his two direct appeals. Adams v. State, 543 So.2d 1244,1249 (Fla. 1989); Smith v. Dugger, 15 FLW 81,83 (Fla. February 15, 1990).

Petitioner's claim is equally unavailing on the merits as well. The actual instructions given at Petitioner's resentencing were an accurate description of Florida's sentencing scheme (SR 906-908). Bertolotti v. Dugger, 883 F.2d 1503,1524 (11th Cir. 1989). Furthermore the challenged instructions along with this type of sentencing scheme has withstood constitutional challenge. Bertolotti v. Dugger, supra; Adams v. State, supra. The jury nor the judge was barred from considering any of the evidence presented in mitigation (SR 327-330,908-909); Jackson v. State, 530 So.2d 269,273 (Fla. 1988). The United States Supreme Court has reaffirmed this holding in Blystone v. Pennsylvania, 4 FLW Fed. S99 (U.S. February 28, 1990).

In summation Petitioner's claim is both procedurally barred and completely without merit. Petitioner has failed to demonstrate any need for further review by this Court.

CONCLUSION

WHEREFORE Respondent respectfully requests that this Court DENY both the stay of execution as well as the writ of habeas corpus

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been forwarded by United States Mail to: BILLY H. NOLAS, CHIEF ASSISTANT CAPITAL COLLATERAL REPRESENTATIVE, Office of the Capital Collateral Representative, 1533 South Monroe Street, Tallahassee, Florida 32301, this 25th day of May, 1990.

Of Counsel