

76,307

IN THE SUPREME COURT OF FLORIDA

JERRY WHITE,

Petitioner,

v.

CASE NO.

RICHARD L. DUGGER,

Respondent.

_____ /

FILED
JUL 12 1990
CLERK OF SUPREME COURT
DEPT. OF CORRECTIONS

DEC

RESPONSE TO APPLICATION FOR STAY OF EXECUTION

COMES NOW Richard L. Dugger, by and through the undersigned counsel, pursuant to Fla.R.App.P. 9.100(h), in response to any application for stay of execution filed in this cause, and respectfully this moves Honorable Court to deny such application, for the reasons set forth below:

(1) White is before this Court on appeal from the denial of his second, and successive, motion for post-conviction relief. White's direct appeal was before this Court in 1984, and this Court affirmed the convictions and sentence of death, after all due consideration. White v. State, 446 So.2d 1031 (Fla. 1984). Following the signing of a death warrant in 1985, White, represented by the Office of the Capital Collateral Representative, filed a motion for post-conviction relief, pursuant to Fla.R.Crim.P. 3.850, raising nine (9) primary claims for relief. The circuit court granted an immediate stay, and, later, afforded White a full evidentiary hearing on his claim of

ineffective assistance of counsel; the post-conviction motion was before the circuit court for over two years, before that court ultimately denied all relief. This Court considered White's post-conviction appeal for two years, before concluding that he was entitled to no relief. **White v. State, 559 So.2d 1097 (Fla. 1990)**. White has failed to demonstrate that he is entitled to any further relief, or review, from this Court, and, in an attempt to block his scheduled execution, White has only come forward with two highly speculative claims.

(2) The State anticipates that White will place much emphasis upon that claim relating to the electric chair. Given this Court's prior contrary precedents, White has failed to demonstrate any basis for a stay of execution in this regard. The State would additionally also take this opportunity to respond to any allegation that this issue has previously prompted a stay of execution from any court. As all parties recognize, this issue was presented to the federal district court in **Buenoano v. Dugger, Middle District of Florida Case No. 90-473-Civ-Orl-19**. This issue, however, was one of at least twenty issues so presented. Similarly, while, again, as all parties recognize, Judge Fawsett afforded Buenoano an evidentiary hearing on this claim, such was not the only subject of the evidentiary hearing; Buenoano was also afforded an evidentiary hearing on her claim of ineffective assistance of counsel. Likewise, while Judge Fawsett later granted Buenoano a certificate of probable cause, allowing appeal to the Eleventh Circuit, the judge did not indicate which claim or claims formed the basis for such ruling.

Finally, while the Eleventh Circuit granted Buenoano a stay of execution, that court, likewise, did not identify any specific issue as the basis for a stay. Accordingly, any contention that an issue concerning Florida's electric chair has specifically prompted a stay of execution would seem to be sheer speculation. To the extent that the order in *Squires v. Dugger*, Middle District of Florida Case No. 90-848-Civ-T-17 can be read to the contrary, the State would suggest that any such finding therein is simply in error. Further, the State would note that the Eleventh Circuit recently denied a stay of execution, in regard to a similar claim lodged as to Alabama's electric chair. *Thomas v. Jones*, Eleventh Circuit Case No. 90-7471, Order of July 11, 1990 (See Appendix).


(3) The State also anticipates that White will place much emphasis upon what he perceives to be a violation of the Public Records Act by the Department of Corrections. No basis in fact exists for any claim in this regard and, even if what White alleges were true, his entitlement to any stay of execution would still remain unclear. The Office of the Capital Collateral Representative has indeed filed formal requests for access to public records, under Chapter 119, Florida Statutes (See Appendix). Superintendent Barton has specifically advised the Office of the Capital Collateral Representative that the requested information is available for inspection (See Appendix). White is not entitled to any stay of execution.

CONCLUSION

WHEREFORE, for the aforementioned reasons, the State of Florida respectfully moves this Honorable Court to deny any requested application for stay of execution in this cause.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL



Assistant Attorney General
Florida Bar No. 300179

DEPARTMENT OF LEGAL AFFAIRS
The Capitol
Tallahassee, FL 32399-1050
(904) 488-0600

COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand delivery to Mr. Billy Horatio Nolas, Esq, Office of the Capital Collateral Representative, 1533 South Monroe Street, Tallahassee, Florida 32301, this 12 day of July, 1990.



RICHARD B. MARTELL
Assistant Attorney General

IN THE SUPREME COURT OF FLORIDA

JERRY WHITE,

Petitioner,

v.

CASE NO.

RICHARD L. DUGGER,

Respondent.

_____ /

INDEX TO APPENDIX

Document

Appendix

Order, Thomas v. Jones,
Eleventh Circuit Court of Appeals
Case No. 90-7471, July 11, 1990

"A"

Public Records Documents,
May 5, 1990 and July 3, 1990

"B"

Letter of Superintendent Barton,
July 11, 1990

"C"