

IN THE SUPREME COURT OF FLORIDA

ANTHONY BERTOLOTTI,
Petitioner,

v.

RICHARD L. DUGGER,
Respondent.

CASE NO. 76394

FILED
JUL 23 1990

CLERK OF COURT
D. J. [Signature]
Deputy Clerk

**RESPONSE TO APPLICATION
FOR STAY OF EXECUTION**

COMES NOW Respondent, 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 moves this Honorable Court to deny any such application, for the reasons set forth below:

(1) Bertolotti is now before this Court on appeal from the denial of his second, and successive, motion for post-conviction relief. Bertolotti was before this Court on direct appeal in 1985, and this Court unanimously affirmed Bertolotti's conviction and sentence of death in all respects, after all due consideration. **See Bertolotti v. State, 476 So.2d 130** (Fla. 1985). Following the signing of Bertolotti's first death warrant, Bertolotti, represented by the Office of the Capital Collateral Representative, filed a petition for writ of habeas corpus in this court and a motion for post-conviction relief in the state circuit court. This Court subsequently denied the

petition for writ of habeas corpus. **See Bertolotti v. Dugger**, 514 So.2d 1095 (Fla. 1987). Meanwhile, the circuit court afforded Bertolotti a full and fair hearing on his claim of ineffective assistance of counsel, and subsequently denied relief on all claims presented. This Court granted a stay of execution to fully consider the merits of the appeal, and, on April 7, 1988, affirmed the circuit court's denial of relief as to all claims. **See Bertolotti v. State**, 534 So.2d 386 (Fla. 1988). Following the signing of a second death warrant, Bertolotti proceeded to federal court, and filed a federal petition for writ of habeas corpus, presenting all of those claims which he deemed most promising. The federal district court denied all relief, and, in an extremely exhaustive and well reasoned opinion, the Eleventh Circuit affirmed in all respects. **See Bertolotti v. Dugger**, 883 F.2d 1503 (11th Cir. 1989). The United States Supreme Court denied Bertolotti's petition for writ of certiorari on June 28, 1990. **Bertolotti v. Dugger**, ____ U.S. ____ (June 28, 1990).


(2) Bertolotti has simply failed to demonstrate any cause why his third scheduled execution should be stayed. Two claims are presented to this Court. Although collateral counsel fails to acknowledge this fact, the claim relating to **Booth v. Maryland**, 482 U.S. 496, 107 S.Ct. 2529, 96 L.Ed.2d 440 (1987), has already been presented to the federal courts and rejected on the merits. **See Bertolotti v. Dugger**, 883 F.2d 1503 (11th Cir. 1989). To the extent that the merits must be reached, the federal courts reached the correct determination. As to

collateral counsel's other claim in regard to electrocution, nothing has been alleged herein which has not previously been rejected by this Court in other recent decisions.

WHEREFORE, for the aforementioned reasons, Respondent moves this Honorable Court to deny any requested stay of execution.

Respectfully submitted,

ROBERT A. BUTTERWORTH
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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 23 day of July, 1990.


RICHARD B. MARTELL
Assistant Attorney General