

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC02-1

AMOS KING,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

ON APPEAL FROM THE CIRCUIT COURT
OF THE SIXTH JUDICIAL CIRCUIT,
IN AND FOR PINELLAS COUNTY, STATE OF FLORIDA

SUPPLEMENTAL BRIEF OF APPELLANT
ON APPRENDI/RING ISSUE, AND MOTION TO STAY EXECUTION

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WARRANT SIGNED, EXECUTION IMMINENT

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PRELIMINARY STATEMENT

The appellant relies on the preliminary statement as presented in its Initial Brief of Appellant. This Court has jurisdiction to Stay the Appellant's execution pursuant to Article V, sections 3(b)(7) and 3(b)(9) of the Florida Constitution.

JURISDICTION

This is an original action pursuant to Fla. R. App. P. 9.100(a). See also Art. I, sec. 13, Fla. Const. The Court's jurisdiction is invoked pursuant to Art. V, sec. 3(b)(9), Fla. Const., and Fla. R. App. P. 9.030(a)(1).

REQUEST FOR ORAL ARGUMENT

The petitioner hereby requests oral argument on the issues raised in this supplement brief.

MR. KING'S EXECUTION SHOULD BE STAYED PENDING THE OUTCOME OF RING v. ARIZONA, ___ U.S. ___, 2002 cert. pet. granted, IN WHICH THE CONSTITUTIONAL SIGNIFICANCE OF APPRENDI IS CHALLENGED AS IT APPLIES TO FLORIDA'S DEATH PENALTY STATUTE.

Petitioner, **AMOS LEE KING**, hereby moves this Honorable Court for an order staying Petitioner's execution, which is presently scheduled for January 24, 2002, pending the final disposition of Ring v. Arizona, ___ US ___, 2002 cert. pet. granted. In support thereof, Mr. King, through counsel, respectfully submits as follows:

1. A death warrant has been signed against Mr. King, and his execution is currently scheduled to take place at 6:00 p.m. on January 24, 2002.

2. On January 11, 2002, the United States Supreme Court granted Timothy Stuart Ring's petition for Writ of Certiorari. Timothy Ring's petition, attached hereto, raises as its sole issue the question of whether Walton v. Arizona, 479 U.S. 639 (1990), should be overruled in light of the United States Supreme Court's subsequent holding in Apprendi v. New Jersey, 530 U.S. 466 (2000), that "for a legislature to remove from the jury the assessment of facts that increase the prescribed range of penalties to which a criminal defendant is exposed" violates the defendant's Sixth Amendment right to a jury trial. Id. at 490.

3. Mr. King filed an Application for Stay of Execution in the Circuit Court on January 14, 2002, arguing the recent granting of

certiorari on the Apprendi issue entitles Mr. King to a stay of execution. Argument was heard in front of that court on January 14, 2002. The Application for Stay of Execution was denied by Circuit Judge Susan Schaeffer on January 14, 2002. Oral argument on Mr. King's appeal from the denial of his successive motion for postconviction relief was scheduled on January 15, 2002. At oral argument, counsel for Mr. King informed the Court of the recent order of the Circuit Court denying an Application for Stay of Execution and informed the Court that a supplemental brief would be filed by Mr. King addressing that denial on January 15, 2002. This supplemental brief follows.

ARGUMENT

The Supreme Court's granting of Ring's Petition signifies the Court's desire to address the questions which have circulated since its opinion in Apprendi despite its previous denial of Petitions for Writs of Certiorari also brought by Arizona inmates under capital sentences. State v. Hoskins, 199 Ariz. 127, 14 P.3d 997 (Ariz., Dec 29, 2000). *Cert. Denied Hoskins v. Arizona*, 122 S.Ct. 386, 70 USLW 3269 (U.S.Ariz. Oct 09, 2001). While the Supreme Court has also previously denied a petition for writ of certiorari in Mills v. State, 786 So.2d 532 (Fla.), *cert. denied* 121 S.Ct. 1752 (2001), the Court's reversal on Ring demonstrates a renewed interest in the issue.

The Florida capital sentencing scheme is in significant part

subject to the same constitutional inadequacies as Arizona's capital sentencing scheme. Indeed, the Ring petition for writ of certiorari expressly identifies Florida as one of nine states whose capital sentencing schemes have questionable constitutional underpinnings pursuant to the language of Apprendi.

The petitioner, Amos Lee King, has previously raised in his state motion for post-conviction relief and habeas petitions and therefore preserved the issues raised by Apprendi and to be resolved by the Supreme Court's future ruling in Ring.

A stay of execution is appropriate where there is: "a reasonable probability that four Members of the (Supreme) Court would consider the underlying issue sufficiently meritorious for the grant of certiorari ... and there must be a likelihood that irreparable harm will result if that decision is not stayed." Barefoot v. Estelle, 463 U.S. 880, 895, 103 S.Ct. 3383, 77 L.Ed.2d 1090 (1983). The United States Supreme Court's grant of Mr. Ring's Petition for Writ of Certiorari on the Apprendi issue establishes the merit of the Petitioner's identical claim. As such, the first prong of Barefoot is clearly met. That there exists the likelihood that irreparable harm should occur if the decision is not stayed is also clear. Amos King is scheduled to be executed in a matter of days. Should, as Mr. King has alleged, the Florida capital sentencing scheme be found unconstitutional pursuant to Ring v. Arizona, Mr. King's execution would have been grounded on

an unconstitutional statute. The State argued in its Response to Application for Stay of Execution that Darden v. Dugger, 521 So.2d 1103 (Fla. 1988), supports their position that no stay should be granted. Such an interpretation of Darden overlooks specific language in that opinion which states, "If this were the first time Darden presented this *Caldwell* claim, such a stay may be warranted." Id. at 1105. Mr. King has not previously made this argument to this Court, thus a stay is warranted here.

Inasmuch as Petitioner is under sentence of death, there is insufficient time for this Court to delay its decision until Ring v. Arizona is decided and the question concerning the constitutionality of Florida's capital sentencing scheme has been finally resolved. It is therefore appropriate and essential that this court enter a stay of Mr. King's execution.

The Petitioner is incarcerated in Florida State Prison at Starke. A stay of execution will in no way effect the State's interest herein.

CONCLUSION AND PRAYER FOR RELIEF

Petitioner respectfully requests that this Court grant a stay of Petitioner's execution UNTIL AFTER THE United States Supreme Court enters a decision in the Ring case, so that final resolution of the constitutionality of Florida's capital sentencing scheme be determined.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been
has been furnished by United States Mail, first class postage
prepaid, hand-delivery and/or by electronic mail to all counsel
of record on this _____ day of January, 2002.

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I hereby certify that a true copy of the foregoing Reply Brief of Appellant, was generated in Courier New, 12 point font, pursuant to Fla. R. App. P. 9.210.

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Petition for a Writ of Certiorari in the case of Ring v. Arizona,
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