

IN THE SUPREME COURT OF FLORIDA

NO. SC01-338

GREGORY MILLS,

Petitioner,

v.

MICHAEL W. MOORE,

Respondent.

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EMERGENCY MOTION: CAPITAL CASE,  
DEATH WARRANT SIGNED; EXECUTION  
SCHEDULED FOR MAY 2, 2001  
AT 6:00 P.M.

APPLICATION FOR A STAY OF EXECUTION

PETITIONER GREGORY MILLS, through his undersigned counsel, respectfully moves this Honorable Court to issue its an order staying the execution of Petitioner's death sentence presently set for 6:00 P.M. on Wednesday, May 2, 2001, pending final disposition by this Court of Mr. Porter's petition for habeas corpus and other extraordinary relief. In support of his application, Petitioner shows:

1. The Governor of the State of Florida has signed a death warrant requiring Gregory Mills' execution on May 2, 2001.

2. A stay of execution is justified on the grounds that substantial issues constituting grounds for relief have been presented to this Court in the above-captioned case.

3. There are two central issues that the Court must address in these proceedings: (1) whether the recent decision by the United States Supreme Court in Apprendi v. New Jersey, 120 S.Ct. 2348 (2000), applies to Florida's override scheme, whether it represents a change in the law under Witt v. State, 387 So. 2d 922 (Fla. 1980), whether this change in law requires retroactive application, and whether Petitioner is entitled to relief under Apprendi; and (2) whether the Court's recent decision in Keen v. State, 775 So. 2d 263 (Fla. 2000), applying Tedder v. State, 322 So. 2d 908 (Fla. 1975), establishes that Tedder was improperly applied on Petitioner's direct appeal in violation of due process, equal protection, and the holding of the recent decision in Fiore v. White, 121 S.Ct. 712 (2001).

4. Because of the substantial state and federal constitutional issues presented herein, Petitioner

requests that his execution be stayed in order to allow the Court and the parties to address these serious issues in due order, not under the exigencies of a death warrant.<sup>1</sup>

5. As Mr. Mills' reply discusses, on the Apprendi issue alone, there is a great degree of conflict among the various courts which have addressed the issue (not to mention the divisive nature of the Apprendi decision itself amongst the members of the Supreme Court). A determination of whether a decision from the Supreme Court is new and should be retroactively applied under Witt is not an insubstantial matter to be decided by this Court. When the Court has previously addressed matters of such importance but execution dates had been pending, the Court granted stays of execution. For example, in Thompson v. Dugger, 515 So. 2d 173 (Fla. 1987), the Court granted a stay of execution to determine whether Hitchcock v. Dugger, 481 U.S. 393 (1987), met the Witt criteria for retroactive application. In Riley v. Wainwright, the

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<sup>1</sup>Petitioner filed his petition well before a death warrant was signed.

Court issued a stay of execution to address whether Lockett v. Ohio, 438 U.S. 586 (1978), met the Witt criteria for retroactive application. And in Jackson v. Dugger, 547 So. 2d 1197 (Fla. 1989), a stay of execution was issued so that the Court could address whether Booth v. Maryland, 482 U.S. 496 (1987), met the Witt criteria for retroactive application.

6. In short, this history establishes the importance of adequate time and perhaps additional briefing when the Court is faced with a Witt analysis of new case law emanating from the Supreme Court. Given the disparate conclusions of the few courts that have addressed Apprendi's impact on capital sentencing schemes, the Court should not have to address this issue under the exigencies of a death warrant.

WHEREFORE, Petitioner, Gregory Mills, respectfully moves for a stay of execution pending final resolution of the above-captioned cases.

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by United States Mail, first class postage prepaid, to all counsel of record on March 26,

2001.

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