

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

CASE NO. CRC77-1696CFANO
CRC77-2173CFANO

Plaintiff,

v.

WARRANT SIGNED, EXECUTION IMMINENT

AMOS LEE KING,

Defendant.

_____ /

**APPLICATION FOR STAY OF EXECUTION AND
POINTS AND AUTHORITIES IN SUPPORT THEREOF**

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” (id. at 490) violates the defendant’s Sixth Amendment right to a jury trial.

3. 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.

4. 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.

5. 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.

6. 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.

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

8. The Court has jurisdiction to entertain this application pursuant to Ex Parte Chesser, 93 Fla. 291, 111 So. 720 (Fla. 1927).

WHEREFORE, Petitioner respectfully requests that this Court grant a stay of Petitioner's execution, so that final resolution of the constitutionality of Florida's capital sentencing scheme be determined.

Respectfully submitted,

April E. Haughey
Florida Bar No. 0119180
Assistant CCC

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.

April E. Haughey
Florida Bar No. 0119180
Assistant CCC
CAPITAL COLLATERAL REGIONAL
COUNSEL-MIDDLE
3801 Corporex Park Drive
Suite 210
Tampa, Florida 33619
813-740-3544
Attorney For Appellant

Copies furnished to:

Honorable Susan F. Schaeffer
Circuit Court Judge
545 1st Avenue North, Room 417
St. Petersburg, FL 33701

Carol M. Dittmar
Assistant Attorney General
Office of the Attorney General
Westwood Building, 7th Floor
2002 N. Lois Avenue
Tampa, FL 33607

C. Marie King
Assistant State Attorney
Office of the State Attorney
P.O. Box 5028
Clearwater, FL 33758-5028

Commission on Capital Cases
ATTN: Mary Jean
402 S. Monroe Street
Tallahassee, FL 32399-1300

Susan Schwartz
Assistant General Counsel
Florida Department of Corrections
2601 Blair Stone Road
Tallahassee, FL 32399-2500

The Honorable Thomas D. Hall
Clerk, Supreme Court of Florida
ATTN: Tanya Carroll
Supreme Court Building
500 S. Duval Street
Tallahassee, FL 32399-1927

United States Court of Appeals for the
Eleventh Circuit
ATTN: Joyce Pope
56 Forsyth Street N.W.
Atlanta, GA 30303

United States Supreme Court
ATTN: Cynthia Rapp
One 1st Avenue N.E.
Washington, D.C. 20543

CERTIFICATE OF COMPLIANCE

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

April E. Haughey
Florida Bar No. 0119180
Assistant CCC
CAPITAL COLLATERAL REGIONAL
COUNSEL-MIDDLE
3801 Corporex Park Drive
Suite 210
Tampa, Florida 33619
813-740-3544
Attorney For Appellant