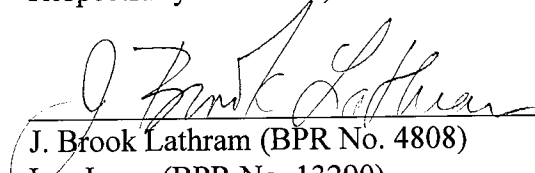


3. Given this Court's order in Harbison, the United States Supreme Court's stay in *Turner*, and the Texas Court of Criminal Appeals' stay in Chi, this Court should vacate Pervis Payne's execution until Baze and/or Harbison are decided by the federal courts.

CONCLUSION

The motion to vacate the execution date should be granted.

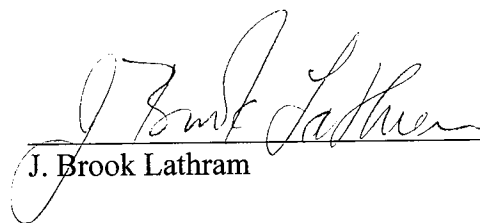
Respectfully submitted,



J. Brook Lathram (BPR No. 4808)
Les Jones (BPR No. 13290)
Todd Rose (BPR No. 15012)
BURCH, PORTER, AND JOHNSON, PLLC
130 North Court Avenue
Memphis, Tennessee 38103
(901) 524-5000

CERTIFICATE OF SERVICE

I certify that on October 3, 2007, a copy of the foregoing was sent via first-class mail to Joseph F. Whalen, 425 Fifth Avenue North, Nashville, Tennessee 37243.



J. Brook Lathram

Exhibit 1

Turner v. Texas, 551 U.S. ____ (Sept. 27, 2007)

(ORDER LIST: 551 U.S.)

THURSDAY, SEPTEMBER 27, 2007

ORDER IN PENDING CASE

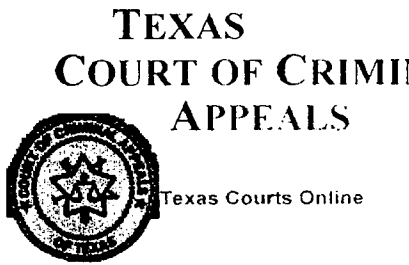
07A272 TURNER, CARLTON A. V. TEXAS

The application for stay of execution of sentence of death presented to Justice Scalia and by him referred to the Court is granted pending the timely filing and disposition of a petition for a writ of certiorari. Should the petition for a writ of certiorari be denied, this stay shall terminate automatically. In the event the petition for a writ of certiorari is granted, the stay shall terminate upon the issuance of the mandate of this Court.

Exhibit 2

Ex Parte Heliberto Chi,

No. WR-61,600-2 (Tex.Cr.App. Oct. 2, 2007)



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of texascourthouses.com.

Case # WR-61,600-02 -> Event: MOT STAY EXEC DISP

[CaseMail](#)

Event Information:

Event Type: MOT STAY EXEC DISP
Description: No Description Available.
Date: 10/2/2007
Disposition: GRANT/ORIGSE
Opinion Written:

Opinions Related to this Event:

Date Issued

No records returned.

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
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Case Information:

Case Number: WR-61,600-02
Date Filed: 10/2/2007
Case Type: 11.071
Style: CHI, HELIBERTO
v.:


Case Events:

| Date | Event Type | Description |
|--|--------------------|---------------------------------------|
|  10/2/2007 | 11.071 WRIT RECD | Art. 11.071 - Application For Counsel |
|  10/2/2007 | WRIT SUBMITTED | Art. 11.071 - Application For Counsel |
|  10/2/2007 | MOT STAY EXEC RECD | No Description Available. |
|  10/2/2007 | MOT STAY EXEC DISP | No Description Available. |

Calendars:

| Set Date | Calendar Type | Reason Set |
|--|---------------|------------|
|  10/2/2007 | PENDNG | SUBMITTED |
|  10/2/2007 | HOLD | TC/ANSWER |

Parties:

| Party | Party Type |
|---|--------------------------------|
|  CHI, HELIBERTO | Applicant (Writs)/Appellant... |

Court of Appeals Case Information:

COA Case Number:
COA Disposition:
Opinion Cite:
Court of Appeals District:

Trial Court Information:

Trial Court:
County:
Case Number:
Judge:
Court Reporter:

Exhibit 3

Condemned Killer Wins Reprieve On Lethal Injection Claim

Associated Press, October 3, 2007

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*Condemned killer wins reprieve on lethal injection claim The Associated Press State & Local Wire
October 3, 2007 Wednesday 7:04 AM GMT*

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October 3, 2007 Wednesday 7:04 AM GMT

SECTION: STATE AND REGIONAL

LENGTH: 851 words

HEADLINE: Condemned killer wins reprieve on lethal injection claim

BYLINE: By MICHAEL GRACZYK, Associated Press Writer

DATELINE: HOUSTON

BODY:

The Texas Court of Criminal Appeals brought the state in line with the effect of a U.S. Supreme Court review of lethal injection procedures by stopping Wednesday's scheduled execution of a Honduran man.

In a reversal from a week ago, the state's highest criminal court Tuesday ordered a halt to the lethal injection of **Heliberto Chi**, 28, condemned for killing the manager of an Arlington clothing store during a robbery 6 1/2 years ago.

Just last week, the appeals court was given a similar appeal for Carlton Turner Jr., a Dallas man set to die for killing his parents, but refused to stop his punishment. The Supreme Court, which last week agreed to review whether lethal injection is unconstitutionally cruel in a claim raised by two condemned Kentucky inmates, gave Turner a reprieve a few hours later, sparing him a trip to the nation's busiest death chamber in Huntsville.

The Kentucky lethal injection procedure is the same one used by Texas and other states.

Although Chi's lawyers were prepared to go to the Supreme Court, his appeal never got that far.

"I'm grateful there's some measure of common sense descending on the great state of Texas," Wes Ball, Chi's attorney, said. "We're not left in the wilderness."

Chi would have been the 27th inmate executed in Texas this year, far more than any other state.

"We're actually joining the company of perhaps more progressive states like Alabama and Florida," Ball said. "Somebody's finally going to decide this question, so let's stop killing people. If we're supposed to kill them, we can kill them later."

In its brief order, the appeals court gave state lawyers 30 days to address the question of "whether the current method of administering lethal injection in Texas constitutes cruel and unusual punishment" in violation of the Eighth Amendment of the Constitution.

In their appeal, Chi's attorneys said the execution procedure "creates a wholly unnecessary, unacceptable risk that he will experience excruciating pain and suffering."

The Texas Attorney General's Office has said it will review each condemned inmate with an approaching execution date on a case-by-case basis. Gov. Rick Perry, who could issue a 30-day reprieve, has said through a spokesman that the matter is for the courts to resolve but also has said he believes the procedure is proper.

Early last week, within hours of the Supreme Court announcement in the Kentucky case, the courts allowed Texas officials to execute Michael Richard for a slaying 21 years ago. Lawyers attributed his execution moving forward to procedural hurdles they couldn't overcome in the hours immediately after the high court announced its Kentucky review. The Texas Court of Criminal Appeals never ruled in his case because the appeal was filed past the court's 5 p.m. closing time.

In Turner's case, the Texas court voted 5-4 against stopping his punishment. The order in Chi's reprieve listed no dissenters among the judges.

Attorneys involved in death penalty litigation viewed Chi's case as a better indicator of the immediate future of lethal injection in Texas, where 405 inmates have received the toxic drug combination since the state resumed capital punishment in 1982.

Earlier Tuesday, Terence O'Rourke, a lawyer in the Chi case working with the government of Honduras, lost a request to the Texas Board of Pardons and Paroles for a commutation request or 180-day reprieve.

O'Rourke's focus was on Chi's inability to contact someone from the Honduran government, a violation of an international treaty, after he was arrested for the 2001 slaying of Armand Paliotta.

The board voted Tuesday 7-0 against a request for commutation. The request for a 180-day reprieve failed in a 4-3 vote.

The International Court of Justice in The Hague, ruling in a suit Mexico filed against the United States, has said the convictions of about 50 Mexican-born prisoners violated the 1963 Vienna Convention because they were denied legal help available under the treaty. President Bush then ordered new state court hearings for those prisoners based on the ruling, but his order applies only to imprisoned Mexican citizens.

David Dow, a University of Houston law professor involved in the Turner and Chi appeals, said Chi was "getting executed because he's Honduran rather than Mexican."

"That seems absurd," he said.

Chi was in the United States illegally when he was arrested in California, then extradited to Texas to face the capital murder charges.

Chi, who once worked as a tailor at the store where the shooting occurred, would say little about the crime in an interview last week.

"My situation is not about being innocent or guilty," he told The Associated Press. "My rights were violated."

"I'm a Christian. I know about the Lord. If it's the Lord's will, things happen. I have great peace in my mind and soul."

The next scheduled execution isn't until late November. It's one of at least three lethal injections on

the Texas Department of Criminal Justice execution calendar extending into next year.

On the Net:

Texas Department of Criminal Justice execution schedule
<http://www.tdcj.state.tx.us/stat/scheduledexecutions.htm>

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