

**IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE**

<b>BYRON LEWIS BLACK,</b>	)	
	)	
<b>Movant,</b>	)	<b>No. M2004-01345-SC-R11-PD</b>
<b>v.</b>	)	
	)	<b>CAPITAL CASE</b>
<b>STATE OF TENNESSEE,</b>	)	
	)	<b>Execution: August 5, 2025</b>
<b>Respondent.</b>	)	

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**STATE OF TENNESSEE'S RESPONSE IN OPPOSITION TO THE  
MOTION FOR A STAY OF EXECUTION**

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## INTRODUCTION

The Court should deny Byron Lewis Black’s stay request for three reasons. *First*, this Court “will not grant a stay or delay of an execution date pending resolution of collateral litigation in federal court,” including petitions for U.S. Supreme Court review. Tenn. Sup. Ct. R. 12(4)(E); *State v. Zagorski*, No. M1996-00110-SC-DPE-DD (Tenn. Oct. 9, 2018) (order) (Appx. 1). *Second*, the due-process question presented in Black’s certiorari petition has no likelihood of success. Due process does not require this Court to recall a decades-old mandate on the eve of an execution so that Black can relitigate intellectual disability—a condition present since youth—for the fourth time. *Third*, Black’s egregious delay is reason enough to deny a stay. The Court should deny Black’s motion.

## BACKGROUND

Over thirty-seven years ago, Black brutally murdered his girlfriend, Angela Clay, and her two young daughters, Latoya (age nine) and Lakeisha (age six). A Davidson County jury convicted Black after considering overwhelming proof of his guilt, including testimony about his previous threats to kill Angela, evidence of his fingerprints in Angela’s house, and evidence that bullets recovered from the crime scene were fired from the same weapon Black used to shoot Angela’s husband a year earlier. *State v. Black*, 815 S.W.2d 166, 172-73 (Tenn. 1991). The jury sentenced Black to death for Lakeisha’s murder. *Id.* at 170.

On the strength of several aggravating circumstances, this Court affirmed Black’s death sentence in 1991, noting that he “deliberately

killed an innocent, helpless, frightened child[,] [that] [h]is acts were those of a cold-blooded executioner who showed a total disregard for human life[,] [and that] [t]his brutal and senseless murder place[d] [him] into the class of defendants deserving capital punishment. . . .” *Id.* at 191.

For decades after, Black attempted to overturn his convictions and death sentence in state and federal courts. He unsuccessfully sought relief under the Tennessee Post-Conviction Procedure Act. *Black v. State*, No. 01C01-9709-CR-00422, 1999 WL 195299, at \*1 (Tenn. Crim. App. Apr. 8, 1999). He then petitioned for a federal writ of habeas corpus, but the federal district court denied relief. *Black v. Bell*, No. 3:00-0764, 181 F. Supp. 2d 832 (M.D. Tenn. 2001).

While Black’s federal habeas appeal was pending, he reopened his state post-conviction petition to litigate an intellectual disability claim under *Atkins v. Virginia*, 536 U.S. 304 (2002). *Black v. State*, No. M2004-01345-CCA-R3-PD, 2005 WL 2662577, at \*2 (Tenn. Crim. App. Oct. 19, 2005). But the trial court ultimately found that Black “failed to prove that he was [intellectually disabled] and that the weight of the proof was that he was not [intellectually disabled].” *Id.* at \*1. The Court of Criminal Appeals affirmed, holding that Black “failed to prove that he is [intellectually disabled] by a preponderance of the evidence.” *Id.* at \*17. This Court denied further review. *Id.* at \*1. And the U.S. Supreme Court denied certiorari. *Black v. Tennessee*, 549 U.S. 852 (2006).

After the federal district court rejected Black’s intellectual disability claim, the Sixth Circuit denied habeas relief, holding that

Black “cannot show that he has significantly subaverage general intellectual functioning that manifested before Black turned eighteen.” *Black v. Carpenter*, 866 F.3d 734, 750 (6th Cir. 2017). The U.S. Supreme Court denied certiorari. *Black v. Mays*, 584 U.S. 1015 (2018).

In 2021, the Tennessee General Assembly amended Tennessee’s intellectual disability statute. *See* 2021 Tenn. Pub. Acts, ch. 399, § 3. The revision established a procedure for certain death-row inmates to raise an intellectual disability claim by filing a motion with the trial court; but the amended statute prohibited such a motion for any inmate whose intellectual disability claim had been “previously adjudicated on the merits.” *See id.* at § 2 (codified at Tenn. Code Ann. § 39-13-203(g)).

Black sought to relitigate his intellectual disability claim through a motion under that 2021 amendment. *Black v. State*, No. M2022-00423-CCA-R3-PD, 2023 WL 3843397, at \*3 (Tenn. Crim. App. June 6, 2023). But the trial court summarily dismissed that motion as statutorily barred by the prior adjudication of Black’s intellectual disability claim. *Id.* at \*4. The Tennessee Court of Criminal Appeals affirmed, and Black did not seek further review from this Court or from the U.S. Supreme Court. *Id.* at \*14.

On July 1, 2025, Black filed a motion to recall the 2006 mandate in the appeal affirming that he is not intellectually disabled. This Court denied that motion on July 8, 2025. *Black v. State*, No. M2004-01345-SC-R11-PD (Tenn. Jul. 8, 2025) (order).

Black then waited twenty days—a mere eight days before his scheduled execution—to seek a stay of execution based on his petition for U.S. Supreme Court review of the order denying recall of the mandate.

### **REASONS TO DENY A STAY**

#### **I. This Court Should Not Grant a Stay of Execution Pending Resolution of Collateral Litigation in Federal Court.**

Tennessee Supreme Court Rule 12(4)(E) states that this Court “will not grant a stay or delay of an execution date pending resolution of collateral litigation in federal court.” Tenn. Sup. Ct. R. 12(4)(E). And “collateral litigation in federal court” includes certiorari petitions seeking U.S. Supreme Court review. *State v. Zagorski*, No. M1996-00110-SC-DPE-DD (Tenn. Oct. 9, 2018) (order denying a stay pending a petition for writ of certiorari seeking U.S. Supreme Court review of state court litigation about lethal injection procedures). “A request for a stay of execution pending litigation of claims in federal court is more appropriately addressed to the federal courts.” *Id.* (citing *Coe v. State*, 17 S.W.3d 251, 251 (Tenn. 2000)).

That is certainly the case here. Black has filed a stay motion alongside his certiorari petition in the U.S. Supreme Court. Those filings contend that this Court’s failure to recall the mandate denies Black a liberty interest without due process and that the U.S. Supreme Court should hold his petition until resolution of *Hamm v. Smith*, No. 24-872, 2025 WL 1603602, at \*1 (June 6, 2025). That is wrong. *See infra* 6-8. But more fundamentally, the U.S. Supreme Court is better suited to

address a stay premised on the applicability of another pending case on its docket.

Like in *Zagorski*, the Court should deny a stay and adhere to the plain terms of Tenn. Sup. Ct. R. 12(4)(E).

## **II. Black’s Certiorari Petition Is Meritless.**

Setting aside the procedural bar under Rule 12(4)(E), Black’s certiorari petition lacks merit, and his attempt to tie his case to *Hamm v. Smith* goes nowhere.

Black’s certiorari petition raises a totally different question than *Hamm*’s. Black asks the U.S. Supreme Court to decide whether this Court denied him a liberty interest without due process of law by rejecting his bid to relitigate a claim of intellectual disability. *Black v. Tennessee*, No. 25-5214 (Petition filed July 28, 2025). Smith, on the other hand, asks the U.S. Supreme Court to determine whether the first and only adjudication of his intellectual disability claim was correct under current Eighth Amendment precedent. *Hamm v. Smith*, No. 24-872 (Brief in Opposition filed April 16, 2025). The former sounds in due process; the latter addresses an Eighth Amendment standard.

And Black never raised the due-process argument to this Court. Nowhere in his motion to recall the mandate did Black argue that failure to do so constituted a due-process violation. (Mot. at 2-16). The U.S. Supreme Court “has almost unfailingly refused to consider any federal-law challenge to a state-court decision unless the federal claim was either addressed by or properly presented to the state court.” *Hemphill v. New*

*York*, 595 U.S. 140, 148 (2022). That means Black’s due-process argument is waived, and the U.S. Supreme Court lacks jurisdiction to consider it. *See Bowe v. Scott*, 233 U.S. 658, 665 (1914).

Moreover, Black’s due-process argument does not warrant the U.S. Supreme Court’s review. This Court’s refusal to recall a nearly two-decade old mandate does not infringe any liberty interest without due process of law. “Due process in the post-conviction context merely requires that the petitioner have the opportunity to be heard at a meaningful time and in a meaningful manner.” *Dotson v. State*, 673 S.W.3d 204, 221-22 (Tenn. 2023) (cleaned up). That is, “[e]very person is entitled to his or her day in court, and no more.” *Mullins v. State*, 294 S.W.3d 529, 540 (Tenn. 2009).

Black has litigated his intellectual disability claim ad nauseam. He litigated it in state court and lost. *Black*, 2005 WL 2662577, at \*2. He then relitigated it in federal court and lost again. *Black*, 866 F.3d at 750. His third attempt to relitigate the claim failed on procedural grounds, and he did not even bother to seek further review from this Court or from the U.S. Supreme Court. *Black*, 2023 WL 3843397, at \*3. Only after his fourth failed swipe at the claim under Tenn. R. App. P. 42(d) does Black now argue a violation of due process.

But due process does not require courts to allow re-litigation on demand. Black had at least two meaningful opportunities to be heard on the merits of his claim in both state and federal court. And he lost both. No new evidence undercuts the validity of those holdings because

intellectual disability must manifest before age eighteen, and Black “cannot show that he has significantly subaverage general intellectual functioning that manifested before [he] turned eighteen.” *Black*, 866 F.3d at 750. The notion that this Court violated due process does not pass the straight-face test.

Nor will the outcome in *Hamm* have any bearing on this case. The U.S. Supreme Court’s resolution of the Eighth Amendment question in that case will not touch in any way on whether due process demands that Black have—though Tenn. R. App. P. 42(d)—yet a fourth crack at his intellectual disability claim. Even on the merits, *Hamm* has nothing to say here. The question presented there is “whether courts evaluating multiple IQ scores must find that every valid score of ‘about’ 75 or less supports an *Atkins* claim.” *Hamm v. Smith*, No. 24-872 (Petition filed February 12, 2025). But the Sixth Circuit rejected Black’s intellectual disability claim in 2017 because his five IQ scores before age eighteen ranged from 83 to 97—well above the 75 mark at issue in *Hamm*. *Black*, 866 F.3d at 748. There is no reason for the U.S. Supreme Court to grant Black’s petition based on his reaching comparison to *Hamm*.

### **III. Black’s Tactical Delay Is Reason Enough to Deny a Stay.**

Black’s tactic to seek a stay nineteen years after this Court’s mandate and a mere eight days before his execution is an affront to the State, to the Court, and to Lakeisha’s family. It is well known that “capital petitioners might deliberately engage in dilatory tactics to prolong their incarceration and avoid execution of a sentence of death.”



*Rhines v. Weber*, 544 U.S. 269, 277-78 (2005). “[I]t is the same strategy adopted by many death-row inmates with an impending execution: bring last-minute claims that will delay the execution, no matter how groundless.” *Price v. Dunn*, 587 U.S. 999, 1008 (2019) (Thomas, J., concurring in denial of certiorari).

But given the significant interests at stake, “[l]ast-minute stays should be the extreme exception, not the norm.” *Bucklew v. Precythe*, 587 U.S. 119, 150 (2019) (cleaned up). “[A] stay of execution is an equitable remedy. It is not available as a matter of right, and equity must be sensitive to the State’s strong interest in enforcing its criminal judgments.” *Hill v. McDonough*, 547 U.S. 573, 584 (2006). The State and victims have a “powerful and legitimate interest in punishing the guilty.” *Calderon v. Thompson*, 523 U.S. 538, 556 (1998) (cleaned up). They also “have an important interest in the timely enforcement of a [death] sentence.” *Bucklew*, 587 U.S. at 149 (cleaned up). And victims have the constitutional right to “a prompt and final conclusion of the case after the conviction or sentence.” Tenn. Const. art I, § 35. Once post-conviction proceedings “have run their course . . . finality acquires an added moral dimension.” *Calderon*, 523 U.S. at 556. “Only with an assurance of real finality can the State execute its moral judgment in a case” and “the victims of crime move forward knowing the moral judgment will be carried out.” *Id.* “To unsettle these expectations is to inflict a profound injury.” *Id.*

To avoid such injury, “the last-minute nature of an application that could have been brought earlier, or an applicant’s attempt at manipulation, may be grounds for denial of a stay.” *Bucklew*, 587 U.S. at 150 (cleaned up). Indeed, federal courts apply “a strong equitable presumption against the grant of a stay where a claim could have been brought at such a time as to allow consideration of the merits without requiring entry of a stay.” *Nelson v. Campbell*, 541 U.S. 637, 650 (2004).

Unfortunately, tactical delay is common in Tennessee end-stage litigation. In Tennessee’s last seven executions, three inmates moved this Court to stay their final execution dates. *State v. Sutton*, No. E2000-00712-SC-DDT-DD (Tenn. Feb. 7, 2020) (motion filed); *State v. Hall*, No. E1997-00344-SC-DDT-DD (Tenn. Nov. 28, 2019) (motion filed); *State v. Irick*, No. M1987-00131-SC-DPE-DD (Tenn. Jul. 30, 2018) (motion filed). Those inmates waited thirteen (Sutton), seven (Hall), and ten (Irick) days before their executions to seek relief.

Black follows this trend by seeking a stay only eight days before his execution and *nineteen years after the contested mandate*. And on an issue he has litigated multiple times, no less. “The proper response to this maneuvering is to deny [Black’s] meritless request[] expeditiously.” *Price*, 587 U.S. at 1008. The Court should reset appropriate norms for timely end-stage litigation by calling out Black’s gross delay as an additional ground for denying his stay motion.

## CONCLUSION

Black’s motion to stay his execution should be denied.

Respectfully submitted,  
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