

No.

IN THE SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM 2017

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MICHAEL EGGERS,  
*Petitioner,*

v.

ALABAMA.,  
*Respondent.*

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On Petition for a Writ of Certiorari  
to the Court of Appeals for the Eleventh Circuit

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APPLICATION FOR STAY OF EXECUTION

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March 12, 2018

**CAPITAL CASE  
EXECUTION SCHEDULED FOR 6:00 PM CENTRAL TIME  
MARCH 15, 2018**

To the Honorable Clarence Thomas, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Eleventh Circuit:

The State, on his request, is scheduled to execute Michael Eggers on March 15, 2018. Mr. Eggers initiated this process by discharging his appointed counsel while moving to withdraw the notice of appeal counsel filed for him. Because this process has been truncated due to Mr. Eggers' request, misinformation provided to the Alabama Supreme Court, and the Alabama Supreme Court's failure to allow process in this Court to be taken in the natural course, a stay of execution is appropriate to address the substantial question of whether Mr. Eggers should have been permitted to withdraw his notice of appeal.

This Court is empowered to grant petitioner a stay of execution in order to adjudicate his constitutional claims. As this Court held in *Barefoot v. Estelle*,<sup>1</sup> a stay may be granted when there is "a reasonable probability that four members of the Court would consider the underlying issue sufficiently meritorious for the grant of certiorari or the notation of probable jurisdiction; . . . a significant possibility of reversal of the lower court's decision; and . . . a likelihood that irreparable harm will result if that decision is not stayed." Further, a stay should be granted when necessary to "give non-frivolous claims on constitutional error the careful attention

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<sup>1</sup> 463 U.S. 880, 895 (1983), superseded on other grounds by 28 U.S.C. § 2253(c).

that they deserve” and when a court cannot “resolve the merits [of a claim] before the scheduled date of execution to permit due consideration of the merits.”<sup>2</sup>

Here, the exigency was created by Mr. Eggers’ request to be executed and by misinformation provided to the Alabama Supreme Court, which led that Court to set an execution date without any request from the State.

On October 30, 2017, Mr. Eggers filed a pro se motion with the Alabama Supreme Court requesting that it set his execution date. The Alabama Supreme Court ordered the State to advise the court of the status of the case. The State responded, informing the Alabama Supreme Court that the appeal from the District Court’s finding that Mr. Eggers was competent to discharge counsel and withdraw his appeal was still pending.

After the Eleventh Circuit affirmed the District Court on December 5, 2017, the State filed another status report with the Alabama Supreme Court. In that status report, the State claimed that the case was over in the Eleventh Circuit because Mr. Eggers appointed counsel had not filed a petition for rehearing. The State did this before the time for filing a petition for rehearing had passed. The State failed to take into account the Eleventh Circuit Rule that permits 21 days for a petition for rehearing, instead using the 14 day period set out in the Federal Rules of Appellate Procedure.

In addition to misinforming the Alabama Supreme Court as to the status of the case, at no time in the status report did the State inform the Alabama Supreme

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<sup>2</sup> *Id.* at 888-89.

Court that counsel could seek certiorari review of this decision in this Court. The State also failed to timely advise the Alabama Supreme Court when counsel filed a petition for rehearing on December 26, 2017. Compounding this problem was the fact that counsel for Mr. Eggers was not served with any of these pleadings.

Armed with this misinformation, on January 23, 2018, the Alabama Supreme Court set Mr. Eggers execution date for March 15, 2018. After counsel obtained the pleadings that led to this execution date, counsel informed the Alabama Supreme Court of this error in a Motion to Vacate his execution date, but to no avail. While the State conceded its misreport about the status of Eleventh Circuit proceedings, it opposed vacating the execution date. And the Alabama Supreme Court denied counsel's motion.

The issue presented by Mr. Eggers' petition for writ of certiorari is significant. This Court has not considered the merits of the question of when a petitioner may discharge counsel and waive appeals and the interplay of that question with a petitioner who has unequivocally wanted to represent himself in the process. This petition deserves to be considered in the normal course, not in a truncated process caused by the Alabama Supreme Court acting on misinformation. Therefore, counsel request that this Court stay the execution scheduled for March 15, 2018.

Respectfully submitted,

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Executed on March 12, 2018