IN THE CIRCUIT COURT OF MAYCOMB COUNTY, ALABAMA

STATE OF ALABAMA,	*	
	*	
v.	*	Case No. CC-00-0000
	*	
JOE CLIENT.	*	

MOTION TO APPLY HEIGHTENED STANDARDS IN THIS CASE BECAUSE THE STATE IS SEEKING THE DEATH PENALTY

Joe Client respectfully moves this Court to order that heightened legal standards apply in this case because the State of Alabama is seeking the death penalty. In support of this motion, Mr. Client submits the following:

1. On January 13, 2016, the State indicted Joe Client for violating Alabama Code section 13A-5-40(a)(3). The State is seeking the death penalty.

2. The possibility of a death sentence in this case implicates important state and federal constitutional concerns requiring special attention from this Court, the prosecutor, court officials, and everyone else involved in these proceedings.

I. Death Penalty Cases Require Heightened Scrutiny and Reliability.

3. The death penalty is fundamentally and qualitatively different from every other punishment because of its severity and finality, and therefore is constitutionally distinct.

> The contrast with the plight of a person punished by imprisonment is evident. An individual in prison does not lose "the right to have rights." A prisoner retains, for example, the constitutional rights to the free exercise of religion, to be free of cruel and unusual punishments, and to treatment as a "person" for purposes of due process of law and the equal protection of the laws. A prisoner remains a member of the human family. Moreover, he retains the right of access to the courts. His punishment is not irrevocable.

Furman v. Georgia, 408 U.S. 238, 290 (1972) (Brennan, J., concurring) (citation omitted); see also id. at 306 (Stewart, J., concurring) ("The penalty of death differs from all other forms of criminal punishment, not in degree but in kind. It is unique in its total

irrevocability. It is unique in its rejection of rehabilitation of the convict as a basic purpose of criminal justice. And it is unique, finally, in its absolute renunciation of all that is embodied in our concept of humanity.").

4. In Woodson v. North Carolina, 428 U.S. 280 (1976), the Supreme Court held that because of this difference the Constitution requires a level of reliability in capital cases that has no parallel in noncapital cases:

> [T]he penalty of death is qualitatively different from a sentence of imprisonment, however long. Death, in its finality, differs more from life imprisonment than a 100-year prison term differs from one of only a year or two. Because of that qualitative difference, there is a corresponding difference in the need for reliability in the determination that death is the appropriate punishment in a specific case.

Id. at 305.

5. The Supreme Court repeatedly has recognized that death penalty cases require unique and heightened constitutional protections to ensure that courts reliably identify those defendants who are both guilty of a capital crime and for whom execution is the appropriate punishment. Hurst v. Florida, 136 S. Ct. 616, 619 (2016) (Constitution "requires a jury, not a judge, to find each fact necessary to impose a sentence of death"); Kennedy v. Louisiana, 554 U.S. 407, 420 (2008) ("When the law punishes by death, it risks its own sudden descent into brutality, transgressing the constitutional commitment to decency and restraint. . . . [T]he Court insists upon confining the instances in which the punishment can be imposed."); Ring v. Arizona, 536 U.S. 584, 618 (2002) (Breyer, J., concurring) ("[T]he danger of unwarranted imposition of the penalty cannot be avoided unless the decision to impose the death penalty is made by a jury rather than by a single governmental official." (citation omitted) (internal quotation marks omitted)); Ford v. Wainwright, 477 U.S. 399, 414 (1986) (Court's consideration of capital cases has been characterized by "heightened concern for fairness and accuracy"); Eddings v. Oklahoma, 455 U.S. 104, 118 (1982) (O'Connor, J., concurring) ("[T]his Court has gone to extraordinary measures to ensure that the prisoner sentenced to be executed is afforded process that will guarantee, as much as is humanly possible, that the sentence was not imposed out of whim, passion, prejudice, or mistake."); Gardner v. Florida, 430 U.S. 349, 358 (1977) (death sentences must be "based on reason rather than caprice or emotion").

6. The Alabama Supreme Court similarly has recognized the substantive difference between capital and noncapital cases and the heightened scrutiny and reliability

this difference requires. See, e.g., Ex parte Stephens, 982 So. 2d 1148, 1153 (Ala. 2006) ("'the harmless error rule is to be applied with extreme caution in capital cases'" (quoting Ex parte Whisenhant, 482 So. 2d 1247, 1249 (Ala. 1984)); Ex parte Frazier, 562 So. 2d 560, 569-70 (Ala. 1989) (articulating separate standards in capital and noncapital cases for evaluating defense claims of perjured testimony); Ex parte Monk, 557 So. 2d 832, 836-37 (Ala. 1989) (holding that capital cases are sufficiently different to warrant open file discovery); Ala. R. App. P. 39(a)(2) (permitting review of claims in death penalty cases even if not preserved properly and permitting Alabama Supreme Court to allow extra time for filing petition).

7. The Alabama legislature has codified the substantive difference between capital and noncapital cases and the heightened scrutiny and reliability this difference requires. See Ala. Code §§ 13A-5-53, 13A-5-55 (mandating special and automatic appellate review of death penalty cases).

II. The Discretion to Impose Death Must Be Limited.

8. The Eighth Amendment requires states to meaningfully narrow the class of persons for whom death is an available penalty. Godfrey v. Georgia, 446 U.S. 420, 427 (1980) ("A capital sentencing scheme must, in short, provide a 'meaningful basis for distinguishing the few cases in which [the penalty] is imposed from the many cases in which it is not.'" (quoting Furman v. Georgia, 408 U.S. 238, 313 (1972) (White, J., concurring))).

9. This means the death penalty is available only for the most severe murders and for the most culpable offenders. See Hall v. Florida, 134 S. Ct. 1986 (2014) (holding Florida's death penalty statute unconstitutional because it failed to adequately prevent possibility that intellectually disabled persons would be executed); Kennedy v. Louisiana, 554 U.S. 407, 420 (2000) (stating "capital punishment must be limited to those offenders who commit 'a narrow category of the most serious crimes' and whose extreme culpability makes them 'the most deserving of execution'" when reaffirming unconstitutionality of death penalty for nonhomicide crimes (citations omitted)); Roper v. Simmons, 543 U.S. 551, 568 (2005) (holding juveniles cannot be sentenced to death); Atkins v. Virginia, 536 U.S. 304, 319 (2002) (holding intellectually disabled persons cannot be sentenced to death); Enmund v. Florida, 458 U.S. 782 (1982) (holding death penalty unconstitutional for one who does not kill, intend to kill, or intend for lethal force to be used); Zant v. Stephens, 462 U.S. 862, 877 (1983) (stating Constitution requires that "an aggravating circumstance must genuinely narrow the class of persons eligible for the death penalty and must reasonably justify the imposition of a more severe sentence on the defendant compared to others found guilty of murder").

10. Standing alone, a conviction for a crime for which death is an available sentence cannot justify the imposition of the death penalty. See Woodson v. North Carolina, 428 U.S. 280 (1976).

III. Courts Must Carefully and Adequately Guide Sentencing Juries in Their Deliberations.

11. To ensure the heightened reliability required in capital cases, a jury authorized to impose the death penalty must be "carefully and adequately guided" in exercising its discretion. Gregg v. Georgia, 428 U.S. 153, 193 (1976). Such guidance is constitutionally sufficient only if it "channel[s] the sentencer's discretion by 'clear and objective standards' that provide 'specific and detailed guidance,' and that 'make rationally reviewable the process for imposing a sentence of death.'" Godfrey v. Georgia, 446 U.S. 420, 428 (1980) (quoting, respectively, Gregg, 428 U.S. at 198, Proffitt v. Florida, 428 U.S. 242, 253 (1976), and Woodson, 428 U.S. at 303); see also Beck v. State, 396 So. 2d 645, 655 (Ala. 1980) (finding that giving the jury "complete and unreviewable discretion, unguided by any standards as to whether the death penalty is appropriate, is unconstitutional").

IV. A Sentence of Death Must Be Based Upon an Individualized Determination of its Appropriateness for Each Particular Defendant.

12. A sentencer cannot constitutionally impose the death penalty on the basis of aggravating circumstances alone:

> [I]n capital cases the fundamental respect for humanity underlying the Eighth Amendment . . . requires consideration of the character and record of the individual offender and the circumstances of the particular offense as a constitutionally indispensable part of the process of inflicting the penalty of death.

Woodson v. North Carolina, 428 U.S. 280, 304 (1976) (citing Trop v. Dulles, 356 U.S. 86, 100 (1958)).

13. Specifically, "the Constitution forbids imposition of the death penalty if the sentencing judge or jury is 'precluded from considering, as a mitigating factor, any aspect of a defendant's character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death,'" and "the sentencing judge or jury 'may not refuse to consider or be precluded from considering any relevant mitigating evidence.'" Smith v. Spisak, 558 U.S. 139, 144 (2010) (quoting Mills v. Maryland, 486 U.S. 367, 374 (1988)); see also Roberts v. Louisiana, 428 U.S. 325, 333-35 (1976) (death penalty

unconstitutional without meaningful opportunity to consider mitigating circumstances).

14. Accordingly, sentencers should "consider[,] in fixing the ultimate punishment of death [,] the possibility of compassionate or mitigating factors stemming from the diverse frailties of humankind." Woodson, 428 U.S. at 304. Only through such a process can capital defendants be treated as the Eighth Amendment requires — "as uniquely individual human beings." Id. Because of this need for individualized treatment, the Supreme Court has required that the sentencer be permitted to consider any relevant mitigating factor, not just those set forth in the state's death penalty statute. See Lockett v. Ohio, 438 U.S. 586, 604-05 (1978); see also Eddings v. Oklahoma, 455 U.S. 104, 112 (1982) ("By holding that the sentencer in capital cases must be permitted to consider any relevant mitigating factor, the rule in Lockett recognizes that a consistency produced by ignoring individual differences is a false consistency.").

V. Death as a Punishment Must Be Proportionate to the Crime for Which it Is Imposed.

15. To satisfy constitutional scrutiny, the death penalty must be imposed consistently and exclusively for the punishment of the most severe conduct. Eddings v. Oklahoma, 455 U.S. 104, 112 (1982); Beck v. State, 396 So. 2d 645, 656 (Ala. 1980) ("Appellate review of death cases is required to make sure that the death penalty will not be wantonly or freakishly imposed."). This requirement was succinctly articulated by the Alabama Supreme Court in Beck:

> To insure that sentences of death will not be arbitrarily and capriciously imposed, we hold that both the Court of Criminal Appeals and this Court should examine all death sentences in light of the standards and procedure approved in Gregg [v. Georgia, 428 U.S. 153 (1976)]. Each death sentence should be reviewed to ascertain whether the crime was in fact one properly punishable by death, whether similar crimes throughout the state are being punished capitally and whether the sentence of death is appropriate in relation to the particular defendant. In making this final determination, the courts should examine the penalty imposed upon the defendant in relation to that imposed upon his accomplices, if any.

Id. at 664; see also Ala. Code § 13A-5-53(b)(3) (proportionality review required).

For these reasons, this Court should order that because the State is seeking the death penalty, a heightened standard of review is applicable to all facets of this case as required by the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, the Alabama Constitution, and Alabama state law.

Respectfully submitted,

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[MOTION UPDATED ON 10/03/17]