

IN THE SUPREME COURT OF GEORGIA

ALEXANDER WILLIAMS IV,

Application No. \_\_\_\_\_

Petitioner,

CAPITAL HABEAS CORPUS

Butts County Superior Court

v.

No. 2000-V-388

FREDERICK HEAD, Warden,  
Georgia Diagnostic and Classification  
Prison,

Respondent.

---

ON APPLICATION FOR CERTIFICATE OF PROBABLE CAUSE TO APPEAL

---

BRIEF OF MRS. ROSALYNN CARTER,  
THE GEORGIA ALLIANCE FOR THE MENTALLY ILL,  
THE GEORGIA PARENT SUPPORT NETWORK,  
NATIONAL MENTAL HEALTH ASSOCIATION OF GEORGIA,  
GEORGIA ASSOCIATION OF HOMES AND SERVICES FOR CHILDREN,  
JEWISH FAMILY AND CAREER SERVICES,  
MENTAL HEALTH SERVICES COALITION,  
TIME FOR COMMUNITY COALITION,  
THE NATIONAL ASSOCIATION OF SOCIAL WORKERS AND  
THE GEORGIA CHAPTER,  
THE BAZELON CENTER,  
ACADEMY OF CHILD AND ADOLESCENT PSYCHIATRY,  
NATIONAL ALLIANCE FOR THE MENTALLY ILL AND  
FEDERATION OF FAMILIES FOR CHILDREN'S MENTAL HEALTH  
AS AMICI CURAE IN SUPPORT OF PETITIONER.

Michael C. Garrett  
Garrett & Gilliard, P.C.  
801 Broad Street, Ste 1001  
Augusta, Georgia 30901-1230  
(706) 724-1896

RECEIVED BY HAND DELIVERY

AND FILED:

SEP 20 2000

  
SUPREME COURT OF GEORGIA

Attorney for Amici Curiae

## INTEREST OF *AMICI CURIAE*

Amici are mental health professional and citizen groups with interests in mental health issues and the treatment of people suffering from mental illness. Amici believe that whatever one may think of the imposition of capital punishment generally, the notion of executing mentally ill juveniles shocks the conscience. Healthy and normal adolescents are developmentally different from adults. Our society recognizes that juveniles are less mature, less experienced, less able to exercise good judgment and self-restraint, more susceptible to environmental influence (both positive and negative), and, as a result, less responsible and less culpable in a moral sense than adults. When juveniles suffer from mental illness, their moral culpability is severely lessened. Amici believe that juveniles suffering from mental illness should not be held to the degree of moral accountability necessary to justify the ultimate sanction of execution. Moreover, amici object to the State involuntarily medicating the mentally ill only to ensure that they are legally competent to be executed. Alex Williams was a juvenile suffering from mental illness when he committed this crime. He remains mentally ill and has been subjected to involuntary medication by the State of Georgia for the sole purpose of making him competent to be executed. Accordingly, amici strongly urge the Court to spare Alex Williams the imposition of capital punishment.

**Rosalynn Carter**, former first lady and Chair of The Carter Center Mental Health Task Force, has worked for more than two decades to improve the quality of life for people around the world. She is an advocate for mental health, early childhood immunization, human rights and conflict resolution through her work at The Carter Center in Atlanta, Georgia. The Center is a private, nonprofit institution founded by former President and Mrs. Jimmy Carter. Mrs.

Carter created and chairs The Carter Center's Mental Health Task Force, an advisory body of experts, consumers and advocates promoting positive change in the mental health field.

Outside the Center, Mrs. Carter is president of the board of directors for the Rosalynn Carter Institute of Georgia Southwestern State University. She also works for, among others, Habitat for Humnaity, a network of volunteers who build homes for the needy, and Project Interconnections, a public/private non-profit partnership to provide housing for homeless people who are mentally ill. She is currently a distinguished fellow at the Emory University Institute for Women's Studies in Atlanta. She has received many honors, among them the Presidential Medal of Freedom, America's highest civilian honor.

**The Georgia Alliance for the Mentally Ill** is a grassroots, self-help, support, education and advocacy organization whose mission is to improve the lives of people and families suffering with severe mental illness through support, education and advocacy. We are the parents, children, spouses, siblings and friends of persons with serious mental illness such as schizophrenia, bi-polar disorder (manic depression), major depression, obsessive compulsive disorder, and panic/anxiety disorders. The Georgia Alliance for the Mentally Ill's advocacy efforts are dedicated to raising awareness of the needs of persons with serious mental illness in the public and private sectors.

**The Georgia Parent Support Network** is a non-profit organization dedicated to providing support, education, and advocacy for children and youth with mental illness, emotional disturbances, and behavioral differences and their families.

**National Mental Health Association of Georgia** serves people with mental illness and their families by promoting mental health, preventing mental illness and ensuring access to

appropriate treatment through advocacy education and training, research, service provision and the reduction of stigma.

**The Georgia Association of Homes and Services for Children** is a membership organization dedicated to children at risk of out of home placement because of abuse and neglect. The Association represents over 80 programs that care for these children with the provision of family support, foster care, group home care, and residential therapeutic services.

**The Jewish Family and Career Services** is a non-profit, non-sectarian agency providing comprehensive social services to the entire community. The agency serves those from young children to the elderly. It has extensive experience in providing high quality mental health services to families and individuals of all ages and from all walks of life.

**The Mental Health Services Coalition** is a collaboration of 50 Georgia organizations whose individual memberships total over 20,000 individuals. Members of the Coalition partner together through education and advocacy on mental health issues for the common good of Georgia's citizens and communities.

**The Time for Community Coalition** is a coalition of local Georgia organizations dedicated to ensuring that people with mental illness, mental retardation/developmental disabilities and addictive disease have quality services and opportunity for successful life in the community. Our organization began as the Time for Change Coalition when over 60 organizations joined to advocate for the passage of House Bill 100, the MHMRSA systems improvement legislation of 1993. The Time for Community Coalition has continued, since the passage of House Bill 100, to advocate for increased funding, increased community-based services, Medicaid reform, supported employment, peer support services, reducing/elimination

mental retardation and community services waiting lists, and consumer centered long-term care services for people with disabilities.

**The National Association of Social Workers** is a professional membership organization comprised of more than 150,000 social workers with chapters in every state, the District of Columbia, New York City, Puerto Rico, the Virgin Islands, Guam and an international chapter in Europe. The **Georgia Chapter** has over 250,000 members. Created in 1955 the National Association of Social Workers (NASW) has as its purpose to develop and disseminate high standards of practice while strengthening and unifying the social work profession as a whole. Among the activities engaged in to further its purposes, NASW promulgates professional standards and criteria, conducts research, published books and studies of interest to the profession, provides continuing education and enforces the *NASW Code of Ethics*. NASW has taken a stand in opposition to the death penalty based on the organization's concern for social justice, human rights and the protection of civil liberties.

**The Judge David L. Bazelon Center for Mental Health Law** (formerly the Mental Health Law Project) is a nonprofit legal advocacy organization based in Washington D.C. It has litigated numerous cases over the past twenty-five years concerning the rights of adults and children with mental disabilities, including the right to refuse anti-psychotic medications.

**The American Academy of Child and Adolescent Psychiatry** is the leading national medical association dedicated to improving the quality of life for youth under 18 years of age who are affected by mental illness. The American Academy of Child and Adolescent Psychiatry promotes child and adolescent psychiatry research, prevention and early intervention, continuing medical education, and access to quality care for all children and

families.

**The National Alliance for the Mentally Ill** is a national support, education, and advocacy organization whose mission is to improve the lives of people and families suffering with severe mental illness through support, education and advocacy. We are the parents, children, spouses, siblings and friends of persons with serious mental illness such as schizophrenia, bi-polar disorder (manic depression), major depression, obsessive compulsive disorder, and panic/anxiety disorders.

**The Federation of Families for Children's Mental Health** is a national parent-run organization focused on the needs of children and youth with emotional, behavioral, or mental disorders and their families. The Federation's mission is to: provide leadership in the field of children's mental health; address the unique needs of children and youth with emotional, behavioral, or mental disorders from birth through transition to adulthood; ensure the rights of full citizenship, support and access to community-based services for children with mental health needs and their families; provide information and engage in advocacy regarding research, prevention, early intervention, family support, education, transition services and other supports needed by children and youth with emotional, behavioral, or mental disorders and their families.

## ARGUMENT

### I

#### BECAUSE THE LAW CONCLUSIVELY AND PRUDENTLY PRESUMES THAT MINORS UNDER THE AGE OF 18 ARE NOT CAPABLE OF EXERCISING THE FULL RESPONSIBILITIES OF ADULTHOOD, THEY SHOULD NOT BE HELD TO THE LEVEL OF MORAL ACCOUNTABILITY NECESSARY TO JUSTIFY THE IMPOSITION OF THE DEATH PENALTY

The United States Supreme Court has observed in a number of different contexts that “children have a very special place in life which the law should reflect.” May v. Anderson, 345 U.S. 528, 536 (1953) (Frankfurter, J. concurring). In cases which present fundamental questions involving minors -- in this case questions of life and death -- we cannot ignore the significance of the status of minority. “Legal theories and their phrasing in other cases readily lead to fallacious reasoning if uncritically transferred to determination of a State’s duty toward children.” Id.

Minors are “most susceptible to influence and psychological damage” and “lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental.” Bellotti v. Baird, 443 U.S. 602, 635 (1979). They are in the early stages of emotional growth; their intellectual development is incomplete; they have only limited practical experience; and their value systems are not yet clearly identified and firmly adopted. Schall v. Martin, 467 U.S. 253, 265 n.15 (9184)(citing People ex rel Wayburn v. Schupf, 39 N.Y.2d 682 (1976). Unlike adults, minors are always in some form of custody and subject to the control of their parents or the state as *parens patriae* upon whom the responsibility of making

important decisions for the minor traditionally rests. Schall v. Martin, 467 U.S. at 256; Param v. J.R., 442 U.S. 584, 602 (1979).

It is only upon the premise that a minor “is not possessed of that full capacity for individual choice . . . that the state may deprive children of . . . rights -- the right to marry, for example, or the right to vote -- deprivations that would be constitutionally intolerable for adults.” Ginsberg v. New York, 390 U.S. 629, 649-50 (1968)(Stewart, J., concurring). The law thus “recognizes a host of distinctions between the rights and duties of children and those of adults.” New Jersey v. T.L.O., 469 U.S. 325, 350 N.2 (1985)(Powell, J., concurring).

The issue before this Court is whether a minor under the age of eighteen can, consistent with the Georgia Constitution, be held to the level of responsibility and moral culpability for which society reserves the penalty of death. The words of the Georgia Constitution proscribing imposition of criminal penalties which are cruel and unusual “are not precise and . . . their scope is not static.” Trop v. Dulles, 356 U.S. 86, 100-01 (1958) (plurality opinion). The meaning of the state constitutional provision is “drawn from the evolving standards of decency that mark the progress of a maturing society.” Fleming v. Zant, 259 Ga. 687, 386 S.E.2d 339, 341 (1989) quoting Penry v. Lynaugh, 492 U.S. 302, 109 S.Ct. 2934, 2953 (1989) quoting Trop 356 U.S. at 101. Thus, punishments which may have been accepted by society at some previous point in time can come to be viewed in our time as unconstitutional. Fleming v. Zant, 386 S.E.2d at 3412; Gregg v. Georgia, 428 U.S. 153, 171 (1976)(opinion of Stewart, Powell and Stevens, JJ.).

The death penalty is different in kind from any other criminal punishment; it is “unique in its severity and irrevocability.” Gregg 428 U.S. 187. In light of this, the United States

Supreme Court has held that the discretion to impose the death penalty must be limited and directed to ensure that it is not inflicted in an arbitrary and capricious manner. Zant v. Stephens, 462 U.S. 862, 874 (1983). Not only must the sentencing authority be provided guidelines, but it must be able to consider any and all mitigating factors, Lockett v. Ohio, 438 U.S. 586, 604 (1978) (plurality opinion), including the character and record of the individual and the circumstances of the particular offense, Woodson v. North Carolina, 428 U.S. 280, 304 (1976) (opinion of Stewart, Powell, and Stevens, JJ.), and must in fact consider such mitigating factors. Eddings v. Oklahoma, 455 U.S. 104, 114 (1982).

In certain situations, however, this Court and the United States Supreme Court have refused to allow the sentencing authority the discretion to determine whether a defendant should live or die based on a balancing of aggravating and mitigating circumstances presented by the individual case. If the offender is mentally retarded, the death penalty is prohibited. Fleming v. Zant, *supra*. If the crime is the rape of an adult woman and it does not result in the death of the victim, the death penalty is prohibited. Coker v. Georgia, 433 U.S. 584, 592 (1977). If the crime results in the death of the victim, but the person charged is guilty of felony murder simpliciter, the death penalty is prohibited. Enmund v. Florida, 458 U.S. 782 (1982). If no aggravating circumstance exists, the death penalty is prohibited. Zant v. Stephens, 462 U.S. 862 (1983). Thus, there are situations in which ensuring an individualized consideration of the circumstances of the offense simply does not satisfy the state or federal constitution. The courts have therefore prohibited execution in such cases.

Both this Court and the United States Supreme Court have already recognized that the youth of the defendant is a mitigating factor which is entitled to great weight. Lewis v. State,

246 Ga. 101, 268 S.E.2d 915 (1980); Eddings v. Oklahoma, 455 U.S. at 116. In Thompson v. Oklahoma, 487 U.S. 815 (1988), four members of the United States Supreme Court held that the youth of the defendant alone, at least where the child is under the age of 16, is an absolute bar to execution. A fifth justice, although concurring on narrower grounds, indicated her belief that the plurality was probably correct. 487 U.S. at 849 (O'Connor, J., concurring). The issue in this case is whether, when the crime is committed by a minor under the age of eighteen, the fact of minority is of such overriding importance that a bright line must be drawn prohibiting execution. In determining whether a particular punishment once tolerated can no longer be reconciled with our advancing standards of decency, this Court has looked to various indicia of contemporary values and attitudes. Fleming, 386 S.E.2d at 341; Coker v. Georgia, 433 U.S. 584 (1977). The most telling indicia of the attitudes of the people of Georgia is the fact that Georgia has not sentenced a minor to death in the last five (5) years. *Amici* strongly believe that such a line must be drawn.

## II

### **MINORS SUFFERING FROM SERIOUS MENTAL ILLNESS SHOULD NEVER BE SUBJECT TO CAPITAL PUNISHMENT**

*Amici* strongly believe that minors suffering from mental illness should never be subject to capital punishment. Whatever arguments that can be advanced to support the infliction of capital punishment on minors aged 16 and 17, those arguments have no credibility when the minor is suffering from mental illness that affects a person's ability to interpret reality, usually

as a result of delusions, hallucinations, and tangential and confused thinking.<sup>1</sup> The combined affects of adolescence and mental illness must preclude the infliction of capital punishment under “evolving standards of decency that mark the progress of a maturing society.” Penry v. Lynaugh, 492 U.S. 302 (1989) quoting Trop v. Dulles, 356 U.S. 86, 101 (1958); Fleming v. Zant, 259 Ga. 687, 386 S.E.2d 339, 341 (1989). The category of impermissible punishments is not a static concept. Rather, it must be reexamined “in light of contemporary human knowledge.” Robinson v. California, 370 U.S. 660, 666 (1962). Contemporary human knowledge concerning the devastating affects of mental illness on juveniles renders the imposition of a death sentence on a mentally ill 17 year old unconstitutional under the Georgia Constitution.

This Court and the United States Supreme Court have recognized that deterrence and retribution are the only two legitimate bases for imposition of the death penalty. Gregg v. Georgia, 423 U.S. at 183; Connor v. State, 254 Ga. 149, 327 S.E.2d 475, 484 (1983). These justifications for capital punishment lose much – if not all – of their persuasiveness when applied to the case of a mentally ill juvenile. Whatever deterrent effect might exist for potential adult offenders, in light of the characteristics associated with adolescence -- impulsiveness, lack of self control, poor judgment, feelings of invincibility -- the deterrent value of the juvenile death penalty is likely of little consequence. In the context of a mentally ill juvenile it is of no

---

<sup>1</sup> For purposes of this brief, *Amici* define mental illness as psychosis. Psychosis has been defined as “[a] severe mental disorder characterized by gross impairment in reality testing, typically shown by delusions, hallucinations, disorganized speech, or disorganized or catatonic behavior.” American Psychiatric Association, *American Psychiatric Glossary*, 175 (7<sup>th</sup> ed. 1994). See generally, American Psychiatric Association, *Diagnostic and Statistical Manual* 151-52 (dementia due to general medical conditions); 285-86 (schizophrenia); 301 (delusional disorder); 332 (manic disorder) 350-55 (bipolar with psychotic features)(4<sup>th</sup> ed. 1994)(DSM IV).

consequence. It would be difficult to support a claim that the death penalty as a deterrent for juvenile crime, as opposed to life imprisonment, "is an indispensable part of the State's criminal justice system." Coker v. Georgia, 437 U.S. at 592 n.4. Whatever deterrent value might exist is insignificant when balanced against the societal values compromised by the juvenile death penalty, especially when employed against juveniles suffering from mental illness.

Retribution, defined by the Supreme Court as "the expression of society's moral outrage at particularly offensive conduct," Gregg, 428 U.S. at 183, is also an unsatisfactory justification for the use of the death penalty against mentally ill juveniles. The moral force of -- and thus the legal justification for -- taking human life in retribution is dependent on the degree of culpability of the offender, and not just on the injury of the victim. See, Enmund v. Florida, 458 U.S. at 800. Because of our societal attitudes and well-founded legal presumptions regarding the status of minority, a minor suffering from mental illness simply cannot be held to that degree of culpability and accountability.

Minors under the age of 16<sup>2</sup> and persons suffering from mental retardation<sup>3</sup> are exempt from the death penalty in Georgia. These prohibitions are based upon an understanding that minors under the age of 16 and the mentally retarded can not be held to the level of moral accountability sufficient to justify the imposition of the death penalty. Amici believe that a minor aged 16 or 17 who suffers from mental illness, likewise, can not be held to be sufficiently morally culpable to be put to death. Amici contend that there are no significant, legally relevant differences between minors under the age of 16, the mentally retarded, and

---

<sup>2</sup> Thompson v. Oklahoma, 487 U.S. 815 (1998).

<sup>3</sup> Fleming v. Zant, 259 Ga. 687, 386 S.E2d 339 (1989).

minors aged 16 or 17 who suffer from mental illness, that would render the former two groups of offenders ineligible for execution, but not the latter. Minors aged 16 or 17 who are psychotic are as volitionally and cognitively impaired as minors under the age of 16 and people with mental retardation. In fact, the delusions, command hallucinations, and disoriented thought process of a mentally ill 16 or 17 year old represent greater dysfunction than that experienced by most "mildly" mentally retarded individuals and by virtually any non-mentally ill teenager under the age of 16.

In 1990, a psychiatrist and a psychologist evaluated Williams' mental condition. Both experts diagnosed Alex Williams as suffering from paranoid schizophrenia. Psychiatrists employed by the state have variously diagnosed his illness as paranoid schizophrenia and schizoaffective disorder with bipolar features. These mental health experts have acknowledged that Mr. Williams' symptoms include delusions, hallucinations and loss of touch with reality. His mental illness has led the prison authorities to forcibly medicate him with anti-psychotic drugs. Amici believe that the execution of Mr. Williams is contrary to contemporary standards of decency and an enlightened understanding of the debilitating nature of mental illness, especially mental illness in juveniles.

### III

#### **INVOLUNTARY ADMINISTRATION OF ANTI- PSYCHOTIC MEDICATION BY STATE MEDICAL PERSONNEL TO MAKE A MENTALLY ILL DEATH- SENTENCED PERSON COMPETENT TO BE EXECUTED VIOLATES MEDICAL PROTOCOL AND EVOLVING STANDARDS OF DECENCY**

Amici strongly object to the involuntary medication of the mentally ill in order to make

them competent to be executed. The United States Supreme Court has held that prison inmates have a due process right to be free from forced medication. Washington v. Harper, 494 U.S. 178, 227 (1990).<sup>4</sup> As a result, the State may not medicate an incarcerated individual against his will unless the State can demonstrate that the individual is a danger to himself or others and that the treatment is in the inmate's medical interests. Id. Forcible medicating a mentally ill inmate in order to make him competent to be executed is plainly not in the inmates medical interest. It is aimed at causing his death.

The doctor-patient relationship is an intimate one. Allowing a mental health professional to involuntary medicate a mentally ill inmate for the sole purpose of assuring that the inmate is competent to be executed is contrary to Hippocrates' and the physician's oath:

I Swear by Apollo the physician and Aesculapius, Hygeia, and Panacea, and I take to witness all the gods, all the goddesses, to keep according to my ability and my judgment the following Oath: ... I will prescribe regimen for the good of my patients according to my ability and my judgment and never do harm to anyone. To please no one will I prescribe a deadly drug, nor give advice which may cause his death... I will preserve the purity of my life and my art... In every house where I come I will enter only for the good of my patients, keeping myself far from all intentional ill doing....<sup>5</sup>

The American Medical Society and the American Psychiatric Associations have adopted positions in their respective ethical codes opposing participation by medical professionals in the legally authorized execution of a prisoner. Their reasoning is the causal relationship between administering a drug which allows the inmate to be executed, and the

---

<sup>4</sup> See also, Riggins v. Nevada, 504 U.S. 127 (1992)(Once a defendant at trial moves to terminate use of antipsychotic medication, state is obligated to demonstrate need for the drug and medical appropriateness of the drug).

<sup>5</sup> Steadman's Medical Dictionary, 23<sup>rd</sup> ed. (1976).

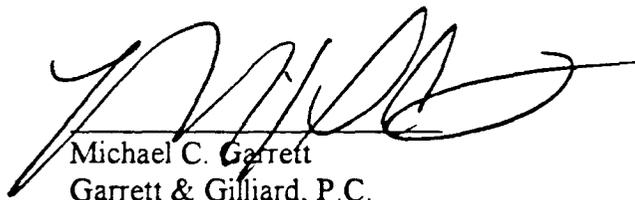
execution itself. They opine that the administration of the drug is responsible for the inmate's ultimate death. AMA Opinion 2.06 ("physicians should not treat the prisoner for purpose of restoring competence unless a commutation order is issued before treatment begins."); see generally, Wallace, Incompetency for Execution, 8 J.Legal Med. 265 (1987); American Psychiatric Association, The Principles of Medical Ethics: With Annotations Especially Applicable to Psychiatry §1(4)(1985).

The positions of the medical community are, if nothing else, an indication of the unusual nature of forced medication solely to facilitate execution. The medical ethical position reinforces the mandates of constitutional law, which dictate that the State's use of antipsychotic drugs solely to facilitate an execution should be prohibited. The due process clause prohibits the state from forcibly medicating a mentally ill inmate in order to render him competent to be executed. See, State v. Perry, 610 So.2d 746 (La. 1992)("forcing a prisoner to take antipsychotic drugs to facilitate his execution does not constitute medical treatment but is antithetical to the basic principles of the healing arts"); Singleton v. State, 313 S.C. 75, 437 S.E.2d 53 (1993).

Amici believe that forcible medication of a mentally ill individual so that he can gain enough competence to then be executed shocks the conscience. Evolving standards of decency dictate that such a practice should be prohibited.

WHEREFORE, for the foregoing reasons, Amici Curiae respectfully request that this Court grant a stay of execution, grant the Certificate, and, after further briefing and argument, direct the habeas court to issue the writ of habeas corpus vacating Mr. Williams' sentence of death.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'M. Garrett', written over a horizontal line.

Michael C. Garrett  
Garrett & Gilliard, P.C.  
801 Broad Street, Ste 1001  
Augusta, Georgia 30901-1230  
(706) 724-1896

Attorney for Amici Curiae