

CAPITAL CASE EXECUTING PENDING: OCTOBER 22, 2001

NO. _____

IN THE COURT OF CRIMINAL APPEALS OF TEXAS
AUSTIN, TEXAS

EX PARTE GERALD LEE MITCHELL

MOTION FOR STAY OF EXECUTION

TO THE JUDGES OF THE COURT OF CRIMINAL APPEALS:

COMES NOW GERALD LEE MITCHELL, by and through his attorney, STANLEY G. SCHNEIDER, and moves this Court for a stay of execution and in support thereof, would show the Court:

Applicant moves the Court for a stay of execution while it considers his habeas application asserting that international law forbids all nations to execute persons who, like Applicant, were younger than 18 years of age at the time of the offense.

The United States apparently is the only nation in the world that still executes persons for crimes committed while younger than 18 and Texas is the leading state in

the United States for executing those persons.

I. INTRODUCTION

Applicant was convicted of capital murder in Cause No. 426583 in the 338th Judicial District Court of Harris County and sentenced to death. This Court affirmed his conviction. He filed a timely application for writ of habeas corpus and relief was denied. He subsequently filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 and relief was denied.

Applicant has filed a subsequent application for writ of habeas corpus pursuant to TEX. CODE CRIM. PROC. ANN. art. 11.071 (Vernon Supp. 2001).

Applicant's execution is set for October 22, 2001.

II. REASONS FOR STAY

In his second application, Applicant asserts that since his first application was filed, a body of customary and conventional international law has developed barring all nations from executing persons who were under the age of 18 at the time of the offense and that this law is binding on the United States and the State of

Texas. Applicant was 17 at the time of the offense.

He asserts in his application that the subsequent application is proper pursuant to Article 11.071 § 5 because the law upon which he relies had not developed at the time of his first application and had not fully developed at the time his first application was denied. He further asserts in his application that Article 11.071 § 5 is unconstitutional to the extent that it does not provide for subsequent applications for writ of habeas corpus when federal law or international law with the weight of federal law withdraws from Texas the power to impose the death penalty on a specific class of persons.

Applicant seeks a stay of execution while this Court considers his subsequent application for habeas relief.

III. SYNOPSIS OF THE HABEAS CLAIM

Applicant in his application for writ of habeas corpus examines in great detail the development of customary international law banning the execution of persons who were “juveniles,” that is, persons less than 18 years of age, at the time of the offense. He also shows

that this has risen to the level of *ius cogens*, a preemptory norm of international law which is binding on all nations. It is well-settled that customary international law constitutes law of the United States for purposes of the Supremacy Clause, U.S. CONST. art. VI, and is binding upon the States.

This issue has never been considered by this Court and the Court should grant a stay so that it may consider the issue following full briefs and oral arguments.

WHEREFORE, PREMISES CONSIDERED, Applicant prays that this Court grant him a stay of execution.

Respectfully Submitted,
Schneider & McKinney, P.C.

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ATTORNEY FOR APPLICANT

CERTIFICATE OF SERVICE

I certify that the above document was served on the State of Texas by mailing copies to the Harris County District Attorney's Office, 1202 Franklin, Houston, Texas 77002 and the State Prosecuting Attorney, P.O. Box 12405, Austin, Texas 78711 on this ____ Day of September, 2001.

Stanley G. Schneider