
IN THE SUPREME COURT OF MISSISSIPPI

No. 1998-DR-00901-SCT

RICHARD GERALD JORDAN

Appellant

v.

STATE OF MISSISSIPPI

Appellee

**MOTION FOR REHEARING AS TO ORDER SETTING
EXECUTION DATE BEFORE EXHAUSTION
OF ALL STATE AND FEDERAL REMEDIES**

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The State’s motion to set Richard Jordan’s execution date didn’t comply with state law. Under Mississippi Code § 99-19-106, no motion to set an execution date should be filed unless the State avers that “*all* state and federal remedies have been exhausted, or that the defendant has failed to file for further state or federal review within the time allowed by law.” (Emphasis added). Here, the State’s motion did not—because it could not—declare that Jordan’s federal and state remedies have been exhausted.

The State does not dispute this reading of Section 99-19-106 or contend that Jordan’s remedies have been exhausted. First, the State has represented that Section 99-19-106 does not apply until “state and federal remedies concerning the validity of [a petitioner’s] conviction and sentence have been exhausted.” *See* State Reply Brief p. 3, *Loden v. State*, Case Nos. 2002-DP-00282-SCT and 2006-CA-00432-SCT (filed on Oct. 24, 2022). Second, Jordan is the lead plaintiff in the Section 1983 action filed in federal court challenging the constitutionality of Mississippi’s method of execution. *See Jordan v. Cain*, No. 3:15-cv295-HTW-LGI [Doc. 1]. The State has thus spoken to when an execution date is proper as to Jordan. After Thomas J. Loden was executed, the federal court asked counsel for the State, “do you have any future plans for the other inmates who are part of this particular case?”¹ Counsel for the State responded, “There are no firm plans to move

¹ Transcript, January 19, 2023, Status Conference, attached as Exhibit A (“the January 2023 Status”) at 8:7-8.

for executions, because the litigants in this case are involved in other postconviction litigation that prohibits the setting or the filing of a motion to set execution.”²

Here, Jordan timely and without extension filed a Petition for Writ of Certiorari to the United States Supreme Court, seeking review of this Court’s denial of the December 2022 Petition.³ The State of Mississippi moved for and was granted an extension of time to respond. On May 7, 2025, the State filed its Brief in Opposition. Jordan then timely and without extension filed his Reply Brief on May 13, 2025.⁴ Thus, Jordan’s December 2022 Post-Conviction Petition, which State counsel explained to the federal court was part of “other postconviction litigation that prohibits the setting or the filing of a motion to set execution,” and which presents sufficiently serious issues to have required extensions of time from the State to oppose, is still pending.

Jordan has presented two questions for certiorari review at the United State Supreme Court. Both questions have significant merit, and Jordan’s case is a sound vehicle for certiorari review. Under the plain language of Mississippi Code § 99-19-106, not “all” of Jordan’s “state and federal remedies have been exhausted.”

In like manner, Jordan filed a separate Post-Conviction Petition under the federal and state *Ex Post Facto* Clauses. This Court denied that petition on May 1, 2025. Simultaneously with the filing of this Rehearing Motion, Jordan also is filing for rehearing

² *Id.* 9:2-5.

³ Jordan v. Mississippi, No. 24-959 (filed March 3, 2025), Exhibit B.

⁴ Jordan v. Mississippi, No. 24-959 Reply Brief, Exhibit C.

as to the denial of his *ex post facto* claims. Given this, there is more than one reason state law precludes the setting of an execution date for Jordan.

There is no question that Jordan has not exhausted his state and federal remedies. Miss. Code Ann. § 99-19-106 (“Setting or resetting the date of execution shall be made on motion of the state that all state and federal remedies have been exhausted, or that the defendant has failed to file for further state or federal review within the time allowed by law.”). Until Jordan’s federal (U.S. Supreme Court) and state (rehearing) remedies have been exhausted, an execution date is not proper under state law. Rehearing as to the setting of an execution date should be granted. The Court should hold the State’s motion to set an execution date in abeyance until all remedies are exhausted.

Respectfully submitted, this the 15th day of May 2025.

/s/ Krissy C. Nobile
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CERTIFICATE OF SERVICE

The undersigned counsel certified that I have served the foregoing motion using the Court's MEC system, which sent notification to the following:

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Respectfully submitted, this the 15th day of May 2025.

/s/ Krissy C. Nobile
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