

IN THE SUPREME COURT OF FLORIDA

MARK DEAN SCHWAB
Appellant,

Case No. SC

v.

****DEATH WARRANT****

STATE OF FLORIDA,
Appellee.

_____ /

RESPONSE TO MOTION FOR STAY OF EXECUTION

COMES NOW the State of Florida, and responds as follows to Schwab's most recent Motion to Stay Execution which was filed on November 15, 2007. For the reasons set out below, Schwab's motion should be denied:

1. Schwab filed a Motion to Vacate or Stay Execution in the Circuit Court on August 15, 2007. The Circuit Court denied the motion to vacate or stay execution on August 17, 2007. On August 30, 2007, Schwab appealed that order to this Court. Case No. SC07-1603.
2. On October 3, 2007, and in conjunction with Case No. SC07-1603, Schwab filed a Renewed Motion to Stay Execution and Hold Proceedings in Abeyance in this Court.

3. This Court affirmed the denial of postconviction relief on November 1, 2007. *Schwab v. State*, 32 Fla. L. Weekly S697 (Fla. Nov. 1, 2007).
4. On November 7, 2007, this Court denied both rehearing and the stay of execution. *Schwab v. State*, 32 Fla. L. Weekly S707 (Fla. Nov. 7, 2007).
5. On November 9, 2007, Schwab filed a second Successive Motion to Vacate Sentence or Stay Execution in the Circuit Court.
6. On November 13, 2007, the Circuit Court summarily denied that motion and denied a stay of execution.
7. On November 15, 2007, at 10:15 a.m., Schwab filed a Motion for Stay of Execution in this Court.
8. As of the filing of this Response Schwab has not filed a Notice of Appeal of the Circuit Court order.
9. Schwab has had ample opportunity to seek review in this Court without subjecting this Court to a stay motion at the eleventh hour. There is no reason this proceeding could not have been brought to this Court sooner. Likewise, there is no basis for the renewed motion to stay execution since there is nothing pending before this Court since this Court denied a stay of execution on November 7, 2007.

10. To the extent that Schwab relies on *Provenzano v. State*, 750 So.2d 597 (Fla. 1999), the circumstances of that case are completely distinguishable from Schwab's abusive eleventh hour filing.

WHEREFORE, the State respectfully requests this Honorable Court deny the Renewed Motion for Stay of Execution.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above has been furnished by **Email** and U.S. Mail to: Mark Gruber, Assistant CCRC-Middle, Daphne Gaylord, Assistant CCRC-Middle, 3801 Corporex Park Drive, Suite 210, Tampa, FL 33619 on this ___th day of November, 2007.

Of Counsel