

Supreme Court of Florida

No. 69,250

WILLIE JASPER DARDEN, JR., Petitioner,

vs.

LOUIE WAINWRIGHT, Secretary,
Department of Corrections, and
RICHARD DUGGER, Superintendent,
Florida State Prison, Respondents.

[October 3, 1986]

PER CURIAM.

Willie Jasper Darden, a state prisoner under sentence of death for whom a fifth death warrant has been signed, petitions this Court for a writ of habeas corpus and requests a stay of execution. We have jurisdiction, article V, section 3(b)(9), Florida Constitution, and deny the requested relief.

In this petition Darden alleges that the death penalty in Florida is applied on the basis of race and other impermissible factors. Because the United States Supreme Court has granted certiorari to review this issue in McCleskey v. Kemp, 106 S.Ct. 331 (1986), and Hitchcock v. Wainwright, 106 S.Ct. 2888 (1986), Darden claims that we should reconsider our previous rulings on this issue or, at least, grant a stay of execution pending resolution of McCleskey and Hitchcock.

We have held that this claim should be presented in a motion for post-conviction relief and cannot be raised for the first time in a habeas corpus proceeding. Stewart v. Wainwright, 69,338 (Fla. Sept. 25, 1986). Therefore, Darden is procedurally barred from raising this issue in this petition.

Accordingly, Darden's petition for a writ of habeas corpus and request for a stay of execution are denied. The motion for stay of execution and/or for stay of execution pending filing and disposition of petition for writ of certiorari, and for other relief is denied also.

It is so ordered.

McDONALD, C.J., and ADKINS, BOYD, OVERTON, EHRLICH and BARKETT, JJ., Concur
SHAW, J., Concur in result only

NO MOTION FOR REHEARING WILL BE ENTERTAINED BY THE COURT.

Original Proceeding - Habeas Corpus

Robert Augustus Harper, Jr., Tallahassee, Florida,
for Petitioner

Jim Smith, Attorney General and Richard W. Prospect, Assistant
Attorney General, Daytona Beach, Florida,
for Respondents