

IN THE SUPREME COURT OF FLORIDA

AILEEN C. WUORNOS

Petitioner,

v.

265

Case No. SC01-

MICHAEL W. MOORE,  
Secretary, Department of Corrections,  
State of Florida,

Respondent.

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RESPONSE TO PETITION FOR HABEAS CORPUS  
AND  
MEMORANDUM OF LAW

COMES NOW, Respondent, Michael W. Moore, Secretary of the Department of Corrections for the State of Florida, by and through the Attorney General of the State of Florida and the undersigned counsel, who answers the petition, and states:

I.

PRELIMINARY STATEMENT

Respondent denies petitioner is being illegally restrained and denies each and every allegation in the instant petition indicating in any manner that petitioner is entitled to relief from this Court.

II.

PROCEDURAL HISTORY AND FACTS

The State generally accepts the limited procedural history set forth in petitioner's brief. Any facts necessary to address Petitioner's allegations on appeal will be addressed in the argument, *infra*.

III.

CLAIMS FOR RELIEF

The instant Habeas Petition was submitted on February 1, 2000, along with an appeal from the denial of a motion for post-conviction relief. The instant Petition presents the following grounds for relief:

I--WHETHER PETITIONER IS COMPETENT TO BE EXECUTED?  
(STATED BY RESPONDENT).

II--WHETHER EXECUTION BY ELECTROCUTION CONSTITUTES  
CRUEL AND UNUSUAL PUNISHMENT UNDER THE UNITED STATES  
AND FLORIDA CONSTITUTIONS.

III--WHETHER EXECUTION BY LETHAL INJECTION CONSTITUTES  
CRUEL AND UNUSUAL PUNISHMENT AND WOULD DEPRIVE  
APPELLANT OF DUE PROCESS AND EQUAL PROTECTION UNDER  
THE UNITED STATES CONSTITUTION? (STATED BY APPELLEE).

ARGUMENT

I.

**WHETHER PETITIONER IS COMPETENT TO BE  
EXECUTED? (STATED BY RESPONDENT).**

Appellant asserts that she may be incompetent to be executed. Although appellant acknowledges that this claim is not currently ripe for judicial review, since no execution is pending, she suggests that it is included in her current habeas petition in order to preserve the issue for federal court review. Clearly, there is no basis for this Court to rule on Wuornos' present claim of possible incompetence.

Florida law provides specific protection against the execution of an incompetent inmate. In order to invoke judicial review of a competency to be executed claim, a defendant must file a motion for stay of execution pursuant to Florida Rule of Criminal Procedure 3.811(d). Such motion can only be considered after a defendant has pursued an administrative determination of competency under Florida Statutes 922.07, and the Governor of Florida, subsequent to the signing of a death warrant, has determined that the defendant is sane to be executed. Since the prerequisites for judicial review of this claim have not occurred in this case, there is no basis for consideration of this issue in appellant's present habeas petition. Compare, Provenzano v. State, 751 So. 2d 37 (Fla. 1999); Provenzano v.

State, 760 So. 2d 137 (Fla. 2000) (detailing procedural history of similar claim); Medina v. State, 690 So. 2d 1241 (Fla. 1997) (remanding for evidentiary hearing on issue in post-conviction appeal from Pasco County).

Appellant's concern with preservation of this issue for federal review does not offer a reason for a premature ruling by this Court. Although the federal courts have refused to permit successive federal habeas petitions in order to secure federal review of this claim, that default may be avoided if a defendant presents the issue prematurely in her initial habeas petition. See, Stewart v. Martinez-Villareal, 523 U.S. 637 (1998). No federal decision requires this Court to consider and address the claim now presented, contrary to state law, in order to preserve Wuornos' federal rights.

Since appellant's claim of incompetence to be executed is not properly before this Court, it must be denied.

## II.

### WHETHER EXECUTION BY ELECTROCUTION CONSTITUTES CRUEL AND UNUSUAL PUNISHMENT UNDER THE UNITED STATES AND FLORIDA CONSTITUTIONS.

Appellant is not subject to execution by electrocution unless she affirmatively elects this option. Section 922.105 (Fla. 2000). Appellant does not allege that she opted for execution by electrocution within the thirty day time period

allowed under Section 922.105(2). Consequently, appellant's complaints regarding the electric chair are moot and, otherwise, patently without merit. Provenzano v. Moore, 744 So. 2d 432 (Fla. 2000).

### III.

**WHETHER EXECUTION BY LETHAL INJECTION  
CONSTITUTES CRUEL AND UNUSUAL PUNISHMENT AND  
WOULD DEPRIVE APPELLANT OF DUE PROCESS AND  
EQUAL PROTECTION UNDER THE UNITED STATES  
CONSTITUTION? (STATED BY APPELLEE).**

Appellant next asserts that execution by lethal injection constitutes cruel and unusual punishment and is unconstitutional. Appellant's claim has been repeatedly rejected by this Court. Provenzano v. State, 761 So. 2d 1097 (Fla. 2000); Sims v. State, 754 So. 2d 665 (Fla. 2000); Bryan v. State, 753 So. 2d 1241 (Fla. 2000).

**WHEREFORE**, based on the foregoing arguments and authorities, the instant Petition for Writ of Habeas Corpus should be summarily denied on the merits.

Respectfully submitted,  
**ROBERT A. BUTTERWORTH**  
**ATTORNEY GENERAL**

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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by U.S. Regular Mail to Joseph T. Hobson, Assistant CCRC, Office of the Capital Collateral Regional Counsel - Middle Region, 3801 Corporex Park Drive, Suite 210, Tampa, Florida 33619, this 29th day of March, 2001.

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**COUNSEL FOR RESPONDENT**