

08/14/03 "See News Release 54 for any concurrences and/or dissents."

SUPREME COURT OF LOUISIANA

No. 2003-KK-2269

STATE OF LOUISIANA

VERSUS

PATRICK KENNEDY

CALOGERO, Chief Justice, concurs in the denial and assigns reasons.

My outset reservation in this case was a concern that the denial of the defendant's stay request and of his writ application might be viewed as blessing the merits of the state's position on the issue presented. Nonetheless, I agreed with the disposition denying the writ application because a writ denial would not foreclose the defendant from raising the issue on appeal should he be convicted and the death penalty be imposed. In the denial of the defendant's application for reconsideration, I perceive that the majority is of a similar mind-set with regard to the defendant's ability to re-raise the issue on appeal. In hindsight, now that the defendant cites an Oregon appeals court case that purports to support his argument on the *ex post facto* issue, I would have preferred that the court had taken up the case to resolve the issue prior to commencement of trial. Notwithstanding, I concur in the denial of the application for reconsideration because a majority of this court has declined to consider applications for reconsideration of writ denials in interlocutory criminal matters, citing La. Sup. Ct. Rule IX, Section 6, even though I have previously indicated that I am of the opinion that an application for reconsideration would be available in such circumstances. *See, e.g., State v. Jones*, 466 So. 2d 453 (La. 1985) (Calogero, J, dissenting); *State v. Brown*, 365 So. 2d 228 (La. 1978) (Calogero, J., dissenting).