

SMITH *v.* MISSISSIPPI.

## CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI.

No. 667. Argued April 30, 1963.—Decided May 13, 1963.

After oral argument and study of the record, it appears that the record is not sufficient to permit decision of petitioner's claims that, in his trial and conviction for rape, he was denied rights secured to him by the Fourteenth Amendment. Therefore, the writ of certiorari is dismissed as improvidently granted, without prejudice to an application for federal habeas corpus relief under 28 U. S. C. § 2241 after exhaustion of any state remedies still open to petitioner.

Reported below: — Miss. —, 139 So. 2d 857.

*Morris B. Abram* argued the cause for petitioner. With him on the brief were *Melvin L. Wulf, Rowland Watts, Norman Dorsen* and *William L. Higgs*.

*G. Garland Lyell, Jr.*, Assistant Attorney General of Mississippi, argued the cause for respondent. With him on the brief was *Joe T. Patterson*, Attorney General of Mississippi.

## PER CURIAM.

The petitioner was convicted of rape by a jury in the Circuit Court of Madison County, Mississippi, and sentenced to death. The conviction was affirmed by the Supreme Court of Mississippi. — Miss. —, 139 So. 2d 857. We granted petitioner's motion for leave to proceed *in forma pauperis*, and his petition for certiorari which presented several claims of alleged denial of rights secured to him by the Fourteenth Amendment. 371 U. S. 939. After oral argument and study of the record, we have reached the conclusion that the record is not sufficient to permit decision of his constitutional claims. The writ is therefore dismissed as improvidently granted, with-

out prejudice to an application for federal habeas corpus relief under 28 U. S. C. § 2241 after exhaustion of any state remedies still open to him. See 28 U. S. C. § 2254; *Fay v. Noia*, 372 U. S. 391, 435.

Upon the effective date of our action today, the stay of execution granted October 5, 1962, by MR. JUSTICE BLACK expires of its own terms. We see no reason, however, to continue the stay in effect. Although the Mississippi Supreme Court, see — Miss. —, 145 So. 2d 688, reserved to the State the right, upon this Court's disposition of the writ of certiorari, to apply for an order fixing a new execution date, we assume that that court will not act on application of the State without affording petitioner an opportunity to pursue with due diligence any available state remedies and, if necessary, the remedy in federal habeas corpus.

*Writ dismissed.*