NO. 08-

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DAROLD R. J. STENSON,

Plaintiff-Appellee,

v.

ELDON VAIL, et al.,

Defendants-Appellants.

ON APPEAL FROM THE
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

No. CV-08-5079-LRS
The Honorable Lonnie Suko
United States District Court Judge

EMERGENCY MOTION UNDER CIRCUIT RULE 27-3 TO VACATE A STAY OF EXECUTION

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CIRCUIT RULE 27-3 CERTIFICATE

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Facts Showing Existence and Nature of Emergency

1. An execution of Stenson is scheduled for December 3, 2008. The district court stayed the execution, based upon the fact that Stenson has filed a civil rights action, without finding that Stenson has shown a likelihood of success on the merits and without determining whether equity disfavors a stay. The order prevents the State from carrying out the lawful sentence, and will require a resetting of the date of execution for thirty judicial days (approximately 45 calendar days) if the stay is not vacated and an execution does not occurs by 11:59 p.m on December 3, 2008. The State suffers severe prejudice from this delay.

2. Stenson was sentenced to death pursuant to a lawful state court judgment and sentence, imposed for his convictions of aggravated first degree murder. The Washington Supreme Court affirmed the sentence in 1997, and the state court subsequently denied Stenson's multiple collateral challenges. *State v. Stenson*, 132 Wn.2d 668, 940 P.2d 1239 (1997), *cert. denied*, 523 U.S. 1008 (1998); *In re Stenson*, 142 Wn.2d 710, 16 P.3d 1 (2001); *In re Stenson*, 150 Wn.2d 207, 76 P.3d 241 (2003); *In re Stenson*, 153 Wn.2d 137, 102 P.3d 151 (2004).

3. Stenson sought habeas corpus relief in federal court in 2001. The district court denied the habeas corpus petition, this Court affirmed the denial of relief in 2007, and the Supreme Court denied certiorari on October 6, 2008. *Stenson v. Lambert*, 504 F.3d 873 (9th Cir. 2007), *cert. denied*, 129 S. Ct. 247 (2008). This Court issued the mandate, and the stay of execution previously granted by the district court terminated, on October 17, 2008. Under Washington law, the date of execution reset to December 3, 2008. RCW 10.95.160(2).

4. In September 2008, Stenson filed an amended complaint in the state trial court challenging Washington's methods of execution, lethal injection and hanging. Exhibit 3, First Amended Complaint, *Stenson v. Vail, et al.*, Thurston County Cause No. 08-2-02080-8. The defendants moved to dismiss the state complaint. Stenson moved for a stay of execution. The state court denied the stay.

On November 21, 2008, the state court granted in part and denied in part the motion to dismiss. Exhibit 4, Order, *Stenson v. Vail*, Thurston County Cause No. 08-2-02080-8. The court dismissed the hanging claim, but denied the motion to dismiss Stenson's remaining claims challenging lethal injection. Exhibit 4. The action remains pending before the state trial court. However, the court denied the motion for a stay of execution. Exhibit 5, Order, *Stenson v. Vail, et al.*, Thurston County Cause No. 08-2-02080-8. The judge found that Stenson did not show a likelihood of success on the merits, and that the interests of finality weighed against a stay of execution. Exhibit 5. Stenson appealed to the Washington Supreme Court, and that appeal remains pending to date.

5. On November 21, 2008, Stenson filed a civil rights complaint in the United States District Court for the Eastern District of Washington. Exhibit 2, Complaint, *Stenson v. Vail, et al.*, USDC Cause No. CV-08-5079-LRS. The complaint named the same defendants and raised the same claims as raised in the pending state court action. Stenson moved for a stay of execution.

6. On November 25, 2008, the district court ruled on the motion. Exhibit 1, Order, *Stenson v. Vail, et al.*, USDC Cause No. CV-08-5079-LRS. The district court entered an order granting a stay of execution to allow Stenson to continue to litigate his state and federal civil rights actions. Exhibit 1.

7. The district court specifically declined to find whether Stenson demonstrated a likelihood of success on the merits of his claims, and the court did not state whether equity favored or disfavored a stay of execution. Exhibit 1. The court simply stayed the execution by either lethal injection or the alternative method of hanging. Exhibit 1.

8. The district court's order stays the execution that is currently scheduled for December 3, 2008. The court's order prevents the State of Washington from carrying out the lawful judgment and sentence. If the execution does not occur on December 3, 2008, the date of execution shall automatically reset to thirty judicial days after the stay of execution is lifted. RCW 10.95.160(2). The district court certified the order for interlocutory appeal. 28 U.S.C. § 1292(b).

9. The State suffers severe prejudice from the stay of execution that was granted without proper consideration of the factors for granting a stay. *Nelson v. Campbell*, 541 U.S. 637, 644 (2004); *In re Blodgett*, 502 U.S. 236 (1992). "Both the State and the victims of crime have an important interest in the timely enforcement of a sentence." *Hill v. McDonough*, 547 U.S. 573, 584 (2006) (citing *Calderon v. Thompson*, 523 U.S. 538, 555 (1998). The State has a strong interest in proceeding with its judgment, and consequently there is a strong presumption against a stay of execution when a challenge is brought on the eve of an execution.

Nelson, 541 U.S. at 649; *Gomez v. U.S. Dist. Court for N. Dist. of California*, 503 U.S. 653, 654 (1992). The prejudice will increase if the stay is not vacated and the execution does not occur on December 3, 2008, because it will cause the date of execution to automatically reset for thirty judicial days (approximately 45 calendar days) after the stay is lifted.

This emergency motion is needed to provide relief in sufficient time before December 3, 2008 so as to allow the State to carry out the execution. If the Court does not entertain the State's motion on an emergency basis, the State will be prejudiced by further delay. The delay will cause irreparable harm to the State and the citizens of the State of Washington.

Notification of Counsel and Parties

Stenson's counsel was notified of this motion telephonically and via electronic mail message, and was served via overnight mail as well as e-mail.

I. INTRODUCTION

Defendants-Appellant (the State), by and through their attorneys, ROBERT M. MCKENNA, Attorney General, and JOHN J. SAMSON and SARA J. OLSON, Assistant Attorneys General, move the Court to vacate the stay of execution entered by the district court on November 25, 2008.

II. ARGUMENT

A. THE DISTRICT COURT ERRED IN GRANTING A STAY BECAUSE IT FAILED TO CONSIDER WHETHER EQUITY BARS A STAY, AND WHETHER STENSON CAN SHOW A LIKELIHOOD OF SUCCESS ON THE MERITS.

The district court stayed the execution scheduled for December 3, 2008. The court did so without finding that Stenson had shown a likelihood of success on the merits, and without considering whether equity disfavors a stay. A court should not automatically grant a stay of execution solely for the reason that the party seeking the stay will be put to death absent a stay. A stay of execution must reflect "the presence of substantial grounds upon which relief might be granted." *Barefoot v. Estelle*, 463 U.S. 880, 894-95 (1983). A court may grant a stay only when the petitioner shows a significant possibility of success on the merits. *Barefoot v. Estelle*, 463 U.S. at 888; *Delo v. Stokes*, 495 U.S. 320, 110 S. Ct. 1880, 1881 (1990). By granting a stay, the district court abused its discretion and failed to follow the clear law governing the granting of a stay of execution.

Stenson has not shown a likelihood of success on the merits, and equity disfavors a stay. The State therefore respectfully requests that the Court vacate the stay of execution.

1. The District Court Failed To Consider Whether Stenson Can Show A Substantial Likelihood Of Success.

a. The District Court Failed To Consider That Stenson Has Not Exhausted Administrative Remedies.

No action may be brought by a prisoner challenging the conditions of his sentence until administrative remedies are exhausted. Exhaustion is mandatory under the Prison Litigation Reform Act (PLRA). 42 U.S.C. § 1997e; *Jones v. Bock*, 127 S. Ct. 910, 918-19 (2007); *Booth v. Churner*, 532 U.S. 731, 740, 742 (2001); *Porter v. Nussle*, 543 U.S. 516, 524-32 (2002); *Woodford v. Ngo*, 548 U.S. 81, 93-94 (2006). Stenson failed to fully exhaust his administrative remedies. Although Stenson filed a grievance, which upon reconsideration was denied, *see* Exhibit 6, Grievance and Responses, he did not then further appeal his remaining administrative remedies. Exhibit 7, Declaration of Devon Schrum. Stenson was required to file a Level II appeal to the Superintendent, and a Level III appeal to the Department Headquarters. Exhibit 7. Stenson failed to pursue these appeals, and he did not properly exhaust his administrative remedies. A stay is not proper for this reason. *See* 42 U.S.C. § 1997e; *Nelson v. Campbell*, 541 U.S. 637, 650 (2004) (any claim challenging lethal injection subject to PLRA).

b. The District Court Failed To Consider Whether The Statute Of Limitations Bars Review.

42 U.S.C. § 1983 does not contain a statute of limitations, so the applicable state statute must be applied. *Rose v. Rinaldi*, 654 F.2d 546 (9th Cir. 1981); *Bagley v. CMC Real Estate Corp.*, 923 F.2d 758 (9th Cir. 1991). Washington imposes a three year statute of limitation for alleged injury to a person. RCW 4.16.080(2). This statute of limitations began to run on the challenges to the method of execution when the death sentence became final upon conclusion of direct review in 1998. *See McNair v. Allen*, 515 F.3d 1168, 1174-75 (11th Cir. 2008); *Cooey v. Strickland*, 479 F.3d 412, 419-22 (6th Cir. 2007); *Neville v. Johnson*, 440 F.3d 221, 222 (5th Cir. 2006); *Crowe v. Donald*, 528 F.3d 1290, 1292-93 (11th Cir. 2008); *Henyard v. Secretary, DOC*, 543 F.3d 644, 647-49 (11th Cir. 2008); *Cooey v. Strickland*, 544 F.3d 588 (6th Cir. 2008). Washington made lethal injection the primary method of execution in 1996. RCW 10.95.180 (amended 1996 Wash. Laws c. 251 § 1). Stenson was sentenced to death in 1994, and his sentence became final no later than 1998 when the Supreme Court denied certiorari. *State v. Stenson*, 132 Wn.2d 668, 940 P.2d 1239 (1997), *cert. denied*, 523 U.S. 1008 (1998). As an individual sentenced to the death penalty, with a sentence of death final upon direct review in 1998, Stenson's cause of action to challenge lethal injection began to run in 1998. Stenson filed his complaint on November 21, 2008, well after the statute of limitations expired.

c. The District Court Failed To Consider Whether Stenson's Claims Would Likely Succeed Or Fail On The Merits.

Lethal injection is presumed constitutional. *Campbell v. Wood*, 18 F.3d 662, 682 (9th Cir. 1994) (*en banc*). Stenson must rebut the presumption by presenting evidence that the method of execution is actually cruel punishment. *Id.*; *In re Kemmler*, 136 U.S. 436, 447 (1890). Speculation that an execution might cause an unnecessary risk of pain does not show a constitutional violation. The possibility of an accident "cannot and need not be eliminated from the execution process in order to survive constitutional review." *LeGrand v. Stewart*, 133 F.3d 1253, 1265 (9th Cir. 1998).

The Supreme Court rejected the very claim now presented by Stenson, holding that lethal injection is a constitutional method of execution, *Baze v. Rees*, 128 S. Ct. 1520, 1529 (2008). The Court held that a lethal injection protocol substantially similar to Kentucky's would not violate the Eighth Amendment. *Id.* at 1537. Washington's protocol is substantially similar to Kentucky's protocol. DOC Policy 490.200 expressly requires minimum qualifications of members of the lethal injection team, sufficient practice sessions, the establishment of two intravenous lines with a normal flow of saline through each line, the administration of 3 grams of sodium thiopental, the Superintendent to observe the inmate for signs of consciousness after the administration of sodium

thiopental and before the administration of pancuronium bromide, and the administration of an additional dose of 3 grams of sodium thiopental before the pancuronium bromide if the Superintendent observes the inmate is conscious after the administration of the first dose of sodium thiopental. *See* Exhibit 8, Declaration of Dell-Autumn Witten, Attachment A. The individual who will site the intravenous lines during the execution regularly inserts intravenous lines as a part of his/her professional duties, and it is reasonable to assign this task to this individual. Exhibit 9, Declaration of Stephen Sinclair; Exhibit 10, Declaration of Fiona Jane Couper, Ph.D.; Exhibit 11, Declaration of Mark Dershwitz, M.D., Ph.D. Additionally, the three practice sessions with the siting of IV lines have occurred. Exhibit 9; and Exhibit 12, Declaration of Dan J. Pacholke. The amended policy is substantially similar to Kentucky's protocol. The proper application of the protocol will result in a rapid, painless and humane death. Exhibits 10 and 11. The policy is constitutional. *See Emmett v. Johnson*, 532 F.3d 291 (4th Cir. 2008); *Workman*, 486 F.3d at 905-10; *Lambert v. Buss*, 498 F.3d 446, 448-54 (7th Cir. 2007); *Woods v. Buss*, 496 F.3d at 622-23; *Hamilton v. Jones*, 472 F.3d 814, 816-17 (10th Cir. 2007); *Cooper v. Rimmer*, 379 F.3d 1029 (9th Cir. 2004); *Poland v. Stewart*, 151 F.3d. 11014 (9th Cir. 1998); *Woolls v.*

McCotter, 798 F.2d 695 (5th Cir. 1986); *Cooey v. Strickland*, 544 F.3d 588 (6th Cir. October 9, 2008).

Finally, Stenson may argue in this Court that he has shown a due process violation, alleging the State lacks authority to promulgate an execution policy. However, the method by which a sentence of death is carried out is a procedural matter and not a "substantial" right. *McKenzie v. Day*, 57 F.3d 1461, 1469 (9th Cir.), *opinion adopted by en banc panel*, 57 F.3d 1493 (9th Cir. 1995) (en banc). The procedures applicable to an execution "are 'regulations that do not affect [the prisoner's] substantial rights.'" *Id.* (quoting *Holden v. Minnesota*, 137 U.S. 483, 491 (1890)); *see also Langford v. Day*, 134 F.3d 1381, 1382 (9th Cir. 1998) (a defendant has "no constitutionally protected interest in a choice of punishment."). The substantive right in Stenson's life was properly taken from him through the criminal proceedings that resulted in this judgment and sentence. Since execution under the existing policy will not deprive Stenson of a protected right, he cannot show a due process violation.

Stenson's claim is really an issue of state law that is without merit. First, Stenson's claim is based upon his allegation that the policy was not the result of proper "legislative delegation" fails because the rule advanced by Stenson does not apply. The policy is a directive governing internal operations at a prison, and is

not an administrative rule that creates law. *Joyce v. Dept. of Corrections*, 155 Wn.2d 306, 323, 199 P.3d 825 (2005). The APA does not apply to policies governing offenders and prisons. RCW 34.05.030(1)(c); *Dawson v. Hearing Committee*, 92 Wn.2d 391, 597 P.2d 1353 (1979); *Foss v. DOC*, 82 Wn. App. 355, 358-59, 918 P.2d 521 (1996). Second, even if the rule applied, the policy is a lawful delegation since the Legislature described in general terms what is to be done and by which agency. *State v. Simmons*, 152 Wn.2d 450, 455, 98 P.3d 789 (2004); RCW 10.95.160-.190; RCW 72.01.090; RCW 72.02.040; RCW 72.09.050; RCW 72.02.045. And there are adequate procedural safeguards to control against arbitrary agency action. *Simmons*, 152 Wn.2d at 457; *State v. Crown Zellerbach*, 92 Wn.2d 894, 901, 602 P.2d 1172 (1979). Such protections exist under existing Washington law. *See, e.g.*, RAP 16.2; RCW 7.16.150; RCW 7.16.290.

2. The District Court Failed To Consider Whether Equity Bars A Stay Of Execution.

The Supreme Court has recognized that a "State retains a significant interest in meting out a sentence of death in a timely fashion." *Nelson v. Campbell*, 541 U.S. 637, 644 (2004); *see also In re Blodgett*, 502 U.S. 236 (1992). "Both the State and the victims of crime have an important interest in the timely enforcement of a sentence." *Hill v. McDonough*, 547 U.S. 573, 584 (2006) (citing *Calderon v.*

Thompson, 523 U.S. 538, 555 (1998). In considering whether to grant a stay of execution, "[e]quity must take into consideration the State's strong interest in proceeding with its judgment and . . . attempt[s] at manipulation." *Nelson*, 541 U.S. at 649 (quoting *Gomez v. U.S. Dist. Court for N. Dist. of California*, 503 U.S. 653, 654 (1992)).

The district court entered the stay simply because Stenson had filed a challenge to lethal injection, and because a stay was needed to consider his claims. However, a stay of execution is not available as a matter of right, and the filing of an action "does not entitle the complainant to an order staying an execution as a matter of course." *Hill*, 547 U.S. at 583-84. The Court should "consider the last-minute nature of an application to stay execution in deciding whether to grant equitable relief." *Gomez*, 503 U.S. at 654. The Court "must consider not only the likelihood of success on the merits and the relative harm to the parties, but also the extent to which the inmate has delayed unnecessarily in bringing the claim." *Nelson*, 541 U.S. at 649-50. "Given the State's significant interest in enforcing its criminal judgment, . . . **there is a strong equitable presumption against the grant of a stay where a claim could have been brought at such a time as to allow consideration of the merits without requiring entry of a stay**." *Id.* at 650

(emphasis added); *see also Hill*, 547 U.S. at 584; *Hill v. McDonough*, 464 F.3d 1256 (11th Cir. 2006); *Hill v. McDonough*, 548 U.S. 940 (2006).

Equity bars a stay of execution. Stenson's sentence became final in 1998 when the Supreme Court denied certiorari on direct review. *Stenson v. Washington*, 523 U.S. 1008 (1998). Stenson has also known since 1996 that he will be executed by lethal injection unless he elects hanging. RCW 10.95.180. The Supreme Court held as early as 2004 that challenges to lethal injection could be brought under 42 U.S.C. § 1983. *Nelson v. Campbell*, 541 U.S. 637 (2004). Stenson delayed bringing this action until the eve of his execution, just six judicial days before the scheduled date. Equity bars a stay of execution. The court erred in failing to consider whether equity favors a stay.

While an inmate may challenge lethal injection in a civil rights action, the filing of such an action does not entitle the inmate to a stay of execution as a matter of right. *Hill*, 547 U.S. at 584. The Court directed the lower courts to consider whether Hill was entitled to a stay of execution. *Id.* The Court stressed there is "a strong equitable presumption against the grant of a stay where a claim could have been brought at such a time as to allow consideration of the merits without requiring entry of a stay." *Hill*, 547 U.S. at 584. On remand, the Eleventh Circuit ruled "the equities do not support Hill's request" for a stay of execution. *Hill*, 464

F.3d at 1259. Among other things, Hill did not file his claim until the eve of his execution in 2006, even though the state court had rejected a similar challenge to lethal injection as early as 2000. *Id.* Since Washington has had challenges to lethal injection even earlier, *see, e.g., In re Pirtle*, 136 Wn.2d 467, 496, 965 P.2d 593 (1998), Stenson could have brought this action earlier. Stenson simply chose to wait. Equity bars a stay. *See, e.g., Crowe v. Donald*, 528 F.3d 1290, 1292-94 (11th Cir. 2008); *Lambert v. Buss*, 498 F.3d 446, 453-54 (7th Cir. 2007); *Woods v. Buss*, 496 F.3d 620, 623 (7th Cir. 2007); *Nooner v. Norris*, 491 F.3d 804, 807-10 (8th Cir. 2007); *Grayson v. Allen*, 491 F.3d 1318, 1322-26 (11th Cir. 2007); *Workman v. Bredesen*, 486 F.3d 896, 911-13 (6th Cir. 2007); *Jones v. Allen*, 485 F.3d 635, 638-41 (11th Cir. 2007); *Cooey v. Strickland*, 484 F.3d 424, 425 (6th Cir. 2007); *Hamilton v. Jones*, 472 F.3d 814, 816 (10th Cir. 2007); *Diaz v. McDonough*, 472 F.3d 849, 850-51 (11th Cir. 2006); *Rutherford v. McDonough*, 466 F.3d 970 (11th Cir. 2006); *Brown v. Livingston*, 457 F.3d 390, 391 (5th Cir. 2006); *Smith v. Johnson*, 440 F.3d 262, 263 (5th Cir. 2006); *Neville v. Johnson*, 440 F.3d 221, 222 (5th Cir. Cir. 2006). "[A] death-sentenced inmate may not wait until execution is imminent before filing an action to enjoin a State's method of carrying it out." *Berry v. Epps*, 506 F.3d 402, 404 (5th Cir. 2007); *see also Workman*, 486 F.3d at 913; *Gomez*, 503 U.S. at 654; *White v. Johnson*, 429 F.3d 572, 574 (5th Cir. 2005);

Cooey v. Strickland, 479 F.3d 412, 419-20 (6th Cir. 2007); *McNair v. Allen*, 515 F.3d 1168, 1177 (11th Cir. 2008); *Henyard v. Secretary, DOC*, 543 F.3d 644 (11th Cir. 2008). In light of the strong presumption against granting a stay of execution, equity demands the denial of any stay of execution. The district court clearly erred because it failed to consider whether equity barred a stay of execution.

B. ASSUMING ARGUENDO THAT A STAY IS PROPER, THE DISTRICT COURT FAILED TO NARROWLY TAILOR THE INJUNCTION.

The district court prevented the State from carrying out the execution entirely, using any method of execution, including the State's alternative method of hanging. However, any injunctive relief should be narrowly tailored to prevent only the alleged unconstitutional injury. *Nelson v. Campbell*, 541 U.S. 637, 648 (2004). In fact, a stay that would utterly prevent the carrying out of a lawful sentence of death moves away from a civil rights action challenging conditions and into the core of habeas corpus. "[A] constitutional challenge seeking to permanently enjoin the use of lethal injection may amount to a challenge to the fact of the sentence itself." *Nelson v. Campbell*, 541 U.S. 637, 644 (2004); *see also Hill v. McDonough*, 547 U.S. 573, 582 (2006).

Assuming, *arguendo*, that Stenson is entitled to a stay to prevent an execution by lethal injection, he is not entitled to an injunction that utterly prevents the execution. The statute contains a severability clause in case part of the statute is deemed unconstitutional. 1996 Wash. Laws c. 251, § 1. When the State asked

the district court to clarify whether it was merely enjoining lethal injection, the Court said the stay would prevent the execution using either method, including hanging, even though Stenson has not challenged the constitutionality of hanging. The order staying the use of hanging, when Stenson has not challenged hanging and this Court has found hanging constitutional, *Campbell v. Wood*, 18 F.3d 662 (9th Cir. 1994), exceeds any injunctive relief which could be afforded to Stenson.

Even if the Court determined the State should be enjoined from using lethal injection altogether, the Court should not enjoin the execution itself. Under Washington law, there are two methods of execution – lethal injection and hanging. RCW 10.95.180. Although lethal injection is the primary method unless the defendant elects hanging, any injunction should only prohibit the use of lethal injection.

The language of RCW 10.95.180 and the severability clause provide for execution by hanging if this Court enjoins lethal injection. The statute provides that the punishment of death "shall" be inflicted, "either" by lethal injection "or" hanging. RCW 10.95.180. When used in a statute, the term "shall" imposes a mandatory duty. *State v. Dodd*, 120 Wn.2d 1, 14, 838 P.2d 86 (1992). The statute mandates the State to carry out the "punishment of death;" death is not an option, but a certainty. Similarly, the terms "either" and "or," in common usage, presents an "alternative formula," implying that there are only two alternatives. *Home Box Office v. Showtime/The Movie Channel*, 665 F.Supp. 1079, 1084 (S.D.N.Y. 1987) (citing

Webster's New World Dictionary of the English Language). The legislature's intent is that the execution "shall" be carried out, "either" by lethal injection "or" by hanging. The only choice the Legislature provided was the choice between lethal injection and hanging. RCW 10.95.180. Where lethal injection is no longer an option, the sentence shall be carried out by hanging.

Preventing an execution by hanging in cases where a Court enjoins lethal injection would directly contradict the intent as expressed in the severability clause. *See In re Lord*, 123 Wn.2d 296, 325-26 n.11, 868 P.2d 835 (1994) (if one method is unconstitutional, then execution will occur using the other statutory method). Stenson's claims challenging lethal injection cannot bar an execution by hanging. Assuming arguendo that a stay of execution was properly entered as to lethal injection, the court erred by enjoining the State from carrying out the execution using the alternative constitutional method of hanging.

III. CONCLUSION

For the reasons stated above, the State respectfully requests that this Court grant its emergency motion and vacate the stay of execution.

RESPECTFULLY SUBMITTED this 25th day of November, 2008.

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No. 08-_____ Darold R.J. Stenson v. Eldon Vail, et al.

CERTIFICATE OF SERVICE

I, KATHY JERENZ, certify that I mailed a copy of: **EMERGENCY MOTION UNDER CIRCUIT RULE 27-3 TO VACATE A STAY OF EXECUTION** on the date below by UPS, Next Day Air on all parties or their counsel of record addressed as follows, and also sent a copy of the emergency motion via e-mail:

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I certify under penalty of perjury that the foregoing is true and correct.

DATED this 25th day of November, 2008, at Olympia, WA.

By: Kathy Jerenz
KATHY JERENZ