

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
OFFICE OF THE CLERK

William M. McCool
CLERK

700 STEWART ST.
SEATTLE, WASHINGTON 98101

September 9, 2010

Clerk
U.S. Court of Appeals
95 7th Street
San Francisco, CA 94103

RE: EMERGENCY Civil Appeal
Cal Coburn Brown vs. Steven Sinclair, 10-CV-1446JCC

Under cover of this letter please find:

- ✓ Notice of Appeal
- ✓ Docket Fee Payment Notification
- ✓ Copy of Docket Entries
- ✓ Copy of Order(s) on Appeal

William M. McCool, Clerk of Court

By s/Lynn Kandziora
Appeals Clerk

cc: All counsel of record [FRAP 3(d)]
Enclosure(s)

The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

CAL COBURN BROWN,

Petitioner,

vs.

STEPHEN C. SINCLAIR,

Respondent.

No. C10-1446-JCC

THIS IS A CAPITAL CASE

NOTICE OF APPEAL

Petitioner Cal Coburn Brown hereby appeals the order denying his requested stay of execution and habeas petition.

DATED this 9th day of September, 2010.

/s/Suzanne Lee Elliott

Law Office of Suzanne Lee Elliott

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Seattle, Washington 98104

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CERTIFICATE OF SERVICE

I, SUZANNE LEE ELLIOTT, hereby certify that on September 9, 2010, I filed the foregoing document with the United States District Court's Electronic Case Filing (CM/ECF) system. I hereby certify that I served one copy of the foregoing document by email on ASSISTANT ATTORNEY GENERAL JOHN SAMSON.

/s/Suzanne Lee Elliott
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**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

*United States District Court
Western District of Washington at Seattle*

September 9, 2010

Docket Fee Payment Notification Form

- I. Short Case Title: Cal Coburn Brown v. Steven Sinclair
- U. S. District Court Docket Number: 10-CV-1446JCC
- II. Date Notice of Appeal Filed: 9/9/10
- III. Date U. S. Court of Appeals Docket Fee Paid: Fee Not Received
Amount: N/A
Receipt: N/A
- Was appellant granted In Forma Pauperis status? YES Date IFP Granted
Was IFP status limited in some fashion? NO
If so, explain:
- IV. Form completed in U. S. District Court by

s/Lynn Kandziora
Appeals Clerk

Note: This form is only utilized to notify the U. S. Court of Appeals concerning the satisfaction of the U. S. Court of Appeals docket fee.

APPEAL, HABEAS, NOSVC

U.S. District Court
United States District Court for the Western District of Washington (Seattle)
CIVIL DOCKET FOR CASE #: 2:10-cv-01446-JCC
Internal Use Only

Brown v. Sinclair
Assigned to: Judge John C Coughenour
Cause: 28:2254 Ptn for Writ of H/C - Stay of Execution

Date Filed: 09/09/2010
Jury Demand: None
Nature of Suit: 535 Death Penalty - Habeas
Corpus
Jurisdiction: Federal Question

Petitioner**Cal Coburn Brown**

represented by **Suzanne Lee Elliott**
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ATTORNEY TO BE NOTICED

V.

Respondent**Steven Sinclair**

represented by **John Joseph Samson**
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ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
09/09/2010	<u>1</u>	EMERGENCY 2254 PETITION for Writ of Habeas Corpus (Receipt # SEA36457), filed by Cal Coburn Brown.(LMK) (Entered: 09/09/2010)
09/09/2010	<u>2</u>	EMERGENCY MOTION for Order Staying September 10, 2010, 12:01 A.M. Execution filed by Petitioner Cal Coburn Brown. Oral Argument Requested. (Attachments: # <u>1</u> Brief in Support of Brown's Emergency Motion for Order Staying September 10, 2010 12:01 A.M. Execution Pursuant to LR 104(3)., # <u>2</u> PROPOSED Emergency Order Staying Execution)(LMK) (Entered: 09/09/2010)

09/09/2010	3	RESPONSE to 1 Petition for Writ of Habeas Corpus by Steven Sinclair. Noting Date 9/9/2010, (Samson, John) (Entered: 09/09/2010)
09/09/2010	4	RESPONSE, by Respondent Steven Sinclair, to 2 MOTION to Stay. (Attachments: # 1 Exhibit PP. 26-138)(Samson, John) (Entered: 09/09/2010)
09/09/2010	5	SUPPLEMENT re 4 Response to Motion by Respondent Steven Sinclair. (Attachments: # 1 Exhibit pp. 3-4)(Samson, John) (Entered: 09/09/2010)
09/09/2010	6	REPLY, filed by Petitioner Cal Coburn Brown, TO RESPONSE to 2 MOTION to Stay (Attachments: # 1 Exhibit 1)(Elliott, Suzanne) (Entered: 09/09/2010)
09/09/2010	7	ORDER by Judge John C Coughenour. The Court DENIES the petition for writ of habeas corpus, docket no. 2 .(CL) (Entered: 09/09/2010)
09/09/2010	8	NOTICE OF APPEAL as to 7 Order on Motion to Stay by Petitioner Cal Coburn Brown. (Elliott, Suzanne) (Entered: 09/09/2010)
09/09/2010	9	APPEAL NOTIFICATION packet sent electronically to US Court of Appeals re 8 Notice of Appeal (Attachments: # 1 Docket)(LMK) (Entered: 09/09/2010)

Honorable John C. Coughenour

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CAL COBURN BROWN,

Petitioner,

v.

STEPHEN SINCLAIR,

Respondent.

C10-1446-JCC

ORDER

This matter comes before the Court upon a petition for writ of *habeas corpus*. (Dkt. No. 2). Petitioner Cal Coburn Brown asks this Court to stay his pending execution, currently scheduled for tomorrow, September 10, 2010, at 12:01 a.m. Respondent Stephen Sinclair, the prison warden charged with the responsibility of supervising the execution, opposes Petitioner's request. (Dkt. No. 3). Having reviewed the parties' briefing and the relevant exhibits and declarations, the Court hereby DENIES the petition for the reasons explained below.

1 **I. BACKGROUND**

2 Petitioner killed Holly Washa on May 24, 1991. A Washington State jury convicted him of
3 aggravated murder in the first degree in December 1993, and sentenced him to death in January 1994.
4 The conviction and sentence became final in January 2009, after a lengthy appeals process that included
5 argument before the United States Supreme Court. *See Brown v. Utrecht*, 530 F.3d 1031 (9th Cir. 2008)
6 (describing procedural history).

7 Since his conviction and sentence became final, Petitioner has raised two claims before this
8 Court, arguing first, that state execution protocols constitute cruel and unusual punishment in violation of
9 the Eighth Amendment, and second, that the Constitution forbids Washington State from executing him
10 because he would be mentally incompetent without the use of certain medications to treat his mental-
11 health issues. This Court denied his petition for relief with respect to the first theory in an order issued on
12 August 31, 2010. (*Brown v. Vail*, C09-5101, Dkt. No. 53). This Court also denies his petition for relief
13 with respect to the second theory today. In so doing, the Court upholds the judgment of the King County
14 Superior Court, which denied Petitioner's request for relief on the second theory on September 8, 2010.
15 (Dkt. No. 1 at 29–39).¹

16 **II. RELEVANT FACTS**

17 Petitioner has been prescribed different medications to treat underlying mental-health problems
18 since he was incarcerated in 1994. These medications have included *lithium* and *depakote*, and the
19 mental-health problems have included diagnoses of antisocial personality disorder and probable bipolar
20 disorder. (McBath Report 4 (Dkt. No. 1 at 41)). Petitioner nowhere expressly alleges that he has taken
21 these medications against his will, nor does he offer evidence to suggest as much.

22 Petitioner was recently examined by Dr. George Woods, a psychiatrist. Dr. Woods diagnosed
23 Petitioner as suffering from bipolar disorder. He also concluded, within a reasonable degree of medical

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25 ¹The Washington State Supreme Court unanimously affirmed the King County Superior Court in an order issued
September 9, 2010. (Dkt. No. 5-1 at 2).

1 certainty, that a “reasonable likelihood” exists that Petitioner would suffer from “symptoms of mood
2 disruption, including mania and depression,” if he were to stop taking his medications. According to Dr.
3 Woods, these possible mood disruptions “may impair his capacity to rationally understand the reason for
4 his execution due to his severe mental illness.” (Woods Report 9 (Dkt. No. 1 at 60)).

5 **III. LEGAL STANDARD**

6 This petition for writ of *habeas corpus* is governed by the Antiterrorism and Effective Death
7 Penalty Act of 1996, *codified in relevant part at* 28 U.S.C. § 2254. Under the Act’s provisions, this
8 Court cannot grant *habeas* relief to any person in the custody of Washington State unless the
9 proceedings in the Washington State judicial system “resulted in a decision that was contrary to, or
10 involved an unreasonable application of, clearly established federal law, as determined by the Supreme
11 Court of the United States; or resulted in a decision that was based on an unreasonable determination of
12 the facts in light of the evidence presented in the state-court proceeding.” 28 U.S.C. § 2254(d)(1)–(2).

13 The decision of a state court can be contrary to clearly established federal law in one of two ways:
14 It can arrive at a conclusion opposite to that reached by the Supreme Court on a question of law, or it can
15 confront facts that are materially indistinguishable from a relevant Supreme Court precedent and arrive at
16 an opposite result. *Williams v. Taylor*, 529 U.S. 362, 405 (2000). The phrase “clearly established federal
17 law” refers to “the holdings, as opposed to the dicta” of the Supreme Court’s decisions. *Id.* at 412. The
18 determination of a state court may be set aside under this standard if, under clearly established federal
19 law, the state court was unreasonable in refusing to extend the governing legal principle to a context in
20 which the principle should have controlled. *Ramdass v. Angelone*, 530 U.S. 156, 166 (2000). A state-
21 court decision is an unreasonable application of federal law if the evidence is “too powerful to conclude
22 anything but the contrary” of the conclusion reached by the state court. *Edwards v. Lamarque*, 475 F.3d
23 1121, 1126 (9th Cir. 2007). It does not suffice on *habeas* review that reasonable minds might disagree
24 about the state court’s decision. *Rice v. Collins*, 546 U.S. 333, 341–42 (2006).

1 **IV. RELEVANT LAW**

2 “[T]he Eighth Amendment prohibits a state from carrying out a sentence of death upon a
3 prisoner who is insane.” *Ford v. Wainwright*, 477 U.S. 399, 410–11. For the purposes of the Eighth
4 Amendment, a condemned prisoner is competent to be executed if he “perceives the connection between
5 his crime and his punishment.” *Id.* at 422 (Powell, J., concurring). The Eighth Amendment therefore
6 forbids the execution of a prisoner “whose mental illness prevents him from comprehending the reasons
7 for the penalty or its implications.” *Id.* at 417 (Marshall, J., for a plurality).

8 If a prisoner makes a substantial showing of incompetency, he is entitled to a “fair hearing” that
9 includes an “opportunity to be heard.” *Panetti v. Quarterman*, 551 U.S. 930, 948 (2007) (citing *Ford*,
10 477 U.S. at 424 (Powell, J., concurring)). Under this standard, “a constitutionally acceptable procedure
11 may be far less formal than a trial.” *Id.* at 950.

12 **V. DISCUSSION**

13 Petitioner’s claims fail for several reasons. First, the United States Supreme Court has never held
14 that the Eighth Amendment forbids a state from executing a prisoner whose competence depends upon
15 his long-standing use of medications to treat mental-health problems. The Antiterrorism and Effective
16 Death Penalty Act therefore precludes relief, because a federal court can grant a state prisoner a writ of
17 *habeas corpus* only if the decision of the state court was “contrary to, or involved an unreasonable
18 application of, clearly established federal law, *as determined by the Supreme Court of the United*
19 *States[.]*” 28 U.S.C. § 2254(d)(1) (emphasis added). Petitioner argues that a “logical reading” of
20 Supreme Court precedent mandates the conclusion that the Eighth Amendment “prohibits the execution
21 of those made artificially or superficially competent via the use of medications.” (Petition 6 (Dkt. No.
22 1)). A logical reading mandates no such thing: Petitioner has medicated the effects of his mental-health
23 problems ever since he was incarcerated, presumably to improve his own quality of life. He has lived for
24 the past two decades under the effects of medication, and now argues that he would be incompetent

1 except for the effects of the medication. It is undisputed that Petitioner is competent to be executed
2 today. The direct precedent of the United States Supreme Court requires no more.

3 Second, the state courts provided Petitioner with adequate process at which to litigate this issue.
4 Petitioner filed a request for relief with the King County Superior Court on September 3, 2010. The trial
5 court heard argument on the issue and considered the parties' proffered evidence. (Findings and
6 Conclusions 2 (Dkt. No. 1 at 30)). The court considered the report of Dr. Woods, and gave his findings
7 their due weight. The court concluded that Petitioner had failed to make a substantial showing of
8 incompetency and therefore denied his motion for a stay of his execution. Because Petitioner was
9 provided with a "fair hearing" that included an "opportunity to be heard," the state courts complied with
10 the requirements of the Eighth Amendment. *See Panetti v. Quarterman*, 551 U.S. 930, 948 (2007)
11 (citing *Ford*, 477 U.S. at 424 (Powell, J., concurring)).

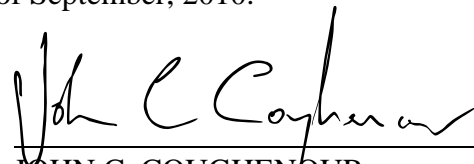
12 Third, Petitioner has failed to demonstrate that the state court unreasonably applied Supreme
13 Court precedent when it concluded that he had failed to make a substantial showing of incompetence.
14 Petitioner relied on the report of Dr. Woods to substantiate his claim, but the report offers nothing more
15 than conjecture, possibility, and hypothesis. Most importantly, Dr. Woods nowhere concludes that
16 Petitioner is currently incompetent to be executed. He nowhere argues that Petitioner cannot understand
17 the rational connection between the murder of Holly Washa and his execution. Dr. Woods only
18 concludes that there exists "a reasonable likelihood" that Petitioner would suffer from "mood
19 disruption" if he stopped taking his medications. Dr. Woods then argues that these possible mood
20 disruptions "may impair [Petitioner's] capacity to rationally understand the reason for his execution due
21 to his severe mental illness." (Woods Report 9 (Dkt. No. 1 at 60)). In other words, Petitioner *might*
22 suffer mood disorders, and these mood disorders *might* impair his understanding, but these
23 consequences follow *only if* Petitioner were to stop taking his medications. Given that the state court
24 was offered only such speculation, this Court cannot conclude that it unreasonably applied federal law.

1 Such speculation cannot satisfy the requirement that a prisoner make a substantial showing of
2 incompetence before being afforded a hearing. One thing is certain: Petitioner can today “perceive the
3 connection between his crime and his punishment[.]” *Ford*, 477 U.S. at 422 (Powell, J., concurring).
4 Because Petitioner offered only speculation, this Court cannot conclude that the decision of the King
5 County Superior Court to deny him a further evidentiary hearing was “an unreasonable determination of
6 the facts in light of the evidence presented in the state-court proceeding.” 28 U.S.C. § 2254(d)(2).

7 **V. CONCLUSION**

8 For the foregoing reasons, the Court hereby DENIES the petition for writ of *habeas corpus*.
9

10 SO ORDERED this 9th day of September, 2010.

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12 _____
13 JOHN C. COUGHENOUR
14 United States District Judge
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