

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

No. 12-99001

SAMUEL VILLEGAS LOPEZ

Petitioner-Appellant,

v.

CHARLES L. RYAN, et. al.,

Respondents-Appellees.

ON APPEAL FROM THE UNITED
STATES DISTRICT COURT FOR
THE DISTRICT OF ARIZONA,

No. CIV-98-0072-PHX-SMM

RESPONSE TO MOTION FOR STAY OF EXECUTION

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OPPOSITION TO MOTION TO STAY

Lopez has not presented grounds for a stay. “A stay is not a matter of right, even if irreparable injury might otherwise result.” *Nken v. Holder*, 556 U.S. 418, 129 S. Ct. 1749, 1760 (2009) (quoting *Virginian R. Co. v. United States*, 272 U.S. 658, 672 (1926)). “The party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion.” *Id.* at 1761 (citing cases). While a stay involves the exercise of judicial discretion, it is not unbridled discretion; legal principles govern the exercise of discretion. *Id.* In considering whether to halt progress on a case, four factors are considered in evaluating whether to issue a stay:

- (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interests lie.

Nken, 129 S. Ct. at 1761; *Leiva-Perez v. Holder*, 640 F.3d 962, 964 (9th Cir. 2011) (*per curiam*); see also *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134 (9th Cir. 2011) (concluding that the Circuit’s “serious questions” version of the sliding scale for preliminary injunctions is viable after the Supreme Court’s decision in *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7 (2008)). “[A] stay of execution is an equitable remedy. It is not available as a matter of right, and equity must be sensitive to the State’s strong interest in enforcing its criminal judgments[.]” *Hill v. McDonough*, 547 U.S. 573, 584 (2006). “Both the State and the victims of crime have an important interest in the timely enforcement of a sentence.” *Id.* (citing *Calderon v. Thompson*, 523 U.S. 538, 556 (1998)).

Here, there are no “serious questions.” Respondents-Appellees’ answering brief addresses the question of whether the district court erred in denying Lopez’s Rule 60 motion/habeas petition. The district court did not err because Lopez’s motion/petition is a successive petition barred by 28 U.S.C. § 2244(b)(1), and, even if properly considered a Rule 60 motion, Lopez has not established the extraordinary circumstances necessary to reopen habeas proceedings. Based on the facts and argument contained in Respondents’-Appellees’ answering brief as incorporated by reference herein, Lopez has not made a strong showing that he is likely to succeed on the merits. See *Moormann v. Schriro*, 672 F.3d 644, 647 (9th Cir. 2012); *Rhoades v. Blades*, 661 F.3d 1201, 1203 (9th Cir. 2011) (*per curiam*);

Beaty v. Brewer, 649 F.3d 1071, 1072 (9th Cir. 2011). Moreover, further delay “from a stay would cause hardship and prejudice to the State and victims, given that the appellate process in this case has already spanned more than two decades.”

Bible v. Schriro, 651 F.3d 1060, 1065 (9th Cir. 2011) (*per curiam*).

CONCLUSION

Based on the foregoing, Lopez’s request for a stay should be denied.

RESPECTFULLY SUBMITTED this 8th day of May, 2012.

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/s/
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CERTIFICATE OF SERVICE

I hereby certify that on May 8, 2012 I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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