

ARIZONA SUPREME COURT

STATE OF ARIZONA,

Appellee,

v.

DANIEL WAYNE COOK,

Appellant.

CR-88-0301-AP

Mohave County Superior Court

No. CR-9358

RESPONSE TO MOTION TO STAY EXECUTION

**Execution Scheduled for
August 8, 2012, at 10:00 a.m.**

Daniel Cook seeks an execution stay based on his pending petition for review in which he alleges that the Arizona Legislature unconstitutionally delegated all policy-making authority for developing an execution protocol to the Arizona Department of Corrections (“ADC”). This Court should deny Cook’s request.

“[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).

A party seeking a stay must establish the following elements:

1. a strong likelihood of success on the merits;
2. irreparable harm if the stay is not granted;
3. that the harm to the requesting party outweighs the harm to the party opposing the stay; and
4. that public policy favors the granting of the stay.

Smith v. Arizona Citizens Clean Elections Commission, 212 Ariz. 407, 410, 132 P.3d 1187, 1190 (2006). Here, Cook’s request should be denied because he has not

demonstrated a strong likelihood of success on the merits of his pending claims. As detailed in the State's opposition to Cook's petition for review, the Legislature properly delegated the job of formulating guidelines for carrying out executions to the agency best equipped to undertake such a task. ADC's authority to revise and carry out its delegated duties does not violate the separation of powers doctrine. Nor does that authority infringe on Cook's ability to seek judicial review of changes to the protocol.

A State's interest in finality is compelling, particularly when, as here, appellate proceedings relating to Cook's convictions and sentences have long since concluded. *See Calderon v. Thompson*, 523 U.S. 538, 556 (1998). "When lengthy federal proceedings have run their course and a mandate denying relief has issued, finality acquires an added moral dimension. . . . To unsettle these expectations is to inflict a profound injury to the 'powerful and legitimate interest in punishing the guilty,' [citation omitted], an interest shared by the State and the victims of crime alike."

Cook's convictions and death sentences have been carefully reviewed in state and federal court dating back to his direct appeal proceedings in 1992. Cook is responsible for two of the most heinous murders ever committed in Arizona. *See State v. Cook*, 170 Ariz. 40, 61, 821 P.2d 731, 752 (1992) ("There is no doubt in our minds that each of these crimes of brutal and senseless torture, sodomy, and murder falls clearly within § 13-703(F)(6), if not at the extreme end of the

spectrum.”). The State’s interest in finality is strong, and additional delay for further review is unwarranted.

DATED this 7th day of August, 2012.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 7, 2012, I electronically filed the Response to Motion to Stay Execution and Certificate of Compliance with the Arizona Supreme Court, by using the Court's AZTurboCourt e-filing system.

Copies of this Response and Certificate of Compliance were deposited for mailing this date to:

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