

UNITED STATES COURT OF APPEALS

MAR 01 2013

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

EDWARD HAROLD SCHAD,

No. 07-99005

Petitioner - Appellant,

D.C. No. CV-9702577-PHX-ROS

v.

District of Arizona,

CHARLES L. RYAN, Arizona
Department of Corrections,

Phoenix

Respondent - Appellee.

ORDER

Before: SCHROEDER, REINHARDT, and GRABER, Circuit Judges.

In view of the remand Order issued on February 26, 2013, and for the reasons stated therein, the motion for a stay of execution is GRANTED during the time of the district court's consideration of the *Martinez* remand and of any appeal therefrom. *See also Barefoot v. Estelle*, 463 U.S. 880, 893-94 (1983) (“[A] circuit court, where necessary to prevent the case from becoming moot by the petitioner’s execution, should grant a stay of execution pending disposition of an appeal when a condemned prisoner obtains a certificate of probable cause on his initial habeas appeal.”).

Judge Graber dissents.