

IN THE
SUPREME COURT OF THE UNITED STATES

ROBERT GLEN JONES, JR.,
PETITIONER,

-vs-

CHARLES L. RYAN, Warden,
RESPONDENT.

OPPOSITION TO APPLICATION FOR STAY OF EXECUTION

CAPITAL CASE
EXECUTION SCHEDULED FOR OCTOBER 23, 2013

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ATTORNEYS FOR RESPONDENT

Respondents oppose Petitioner Robert Glen Jones' last-minute motion for a stay of execution based on his pending petition for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit. In that petition, Jones asks this Court to review the Ninth Circuit's Opinion affirming the district court's denial of his motion for relief from judgment under Federal Rule of Civil Procedure 60(b).

"[A] stay of execution is an equitable remedy." *Hill v. McDonough*, 547 U.S. 573, 584 (2006); *see also Nelson v. Campbell*, 541 U.S. 637, 649 (2004). "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 without undue interference from the federal courts." *Hill*, 574 U.S. at 584. As a result, an inmate seeking a stay must, "like other stay applicants ... satisfy all of the requirements for a stay, including a showing of a significant possibility of success on the merits." *Id.* (citing *Barefoot v. Estelle*, 463 U.S. 880, 895–96 (1983) ("It is well-established that [to warrant a stay] there must be a reasonable probability that four members of the Court would consider the underlying issue sufficiently meritorious for the grant of certiorari or the notation of probable jurisdiction; there must be a significant possibility of reversal of the lower court's decision; and there must be a likelihood that irreparable harm will result if that decision is not stayed.")).¹

Moreover, "before granting a stay, [this Court] must consider not only the likelihood of success on the merits and the relative harms to the parties, but also the extent to which the inmate has delayed unnecessarily in bringing the claim."

¹ In addition, a "stay of execution should first be sought from the Court of Appeals." *Estelle*, 463 U.S. at 896. Jones did not ask the Ninth Circuit to stay his execution.

Nelson, 541 U.S. at 649. “Given the State’s significant interest in enforcing its criminal judgments, 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.* Equity does not tolerate last-minute abusive delays “in an attempt to manipulate the judicial process.” *Nelson*, 541 U.S. at 649. And finality is an important interest:

A State’s interests in finality are compelling when a federal court of appeals issues a mandate denying federal habeas relief. At that point, having in all likelihood borne for years the significant costs of federal habeas review, the State is entitled to the assurance of finality. When lengthy federal proceedings have run their course and a mandate denying relief has issued, finality acquires an added moral dimension. Only with an assurance of real finality can the State execute its moral judgment in a case. Only with real finality can the victims of crime move forward knowing the moral judgment will be carried out. To unsettle these expectations is to inflict a profound injury to the powerful and legitimate interest in punishing the guilty, an interest shared by the State and the victims of crime alike.

Calderon v. Thompson, 523 U.S. 538, 556 (1998).

As set forth in Respondents’ brief in opposition to the certiorari petition, Jones’ claims are unlikely to succeed on their merits, and the question he presents is not, as he contends, significant. (Stay Application, at 2.) Further, Jones could, and should, have brought his claims earlier to avoid asking this Court for a stay on the eve of his execution. Jones has had 17 years to contest his convictions and sentences. An execution warrant has now issued, and the interests of the State and the victims in finality outweigh any factors weighing in favor of granting a stay. This Court should deny Jones’ motion.

Respectfully submitted,

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