

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

Joseph Rudolph Wood III, Petitioner,

vs.

Charles L. Ryan, et al, Respondents.

***** CAPITAL CASE *****

EXECUTION SCHEDULED: JULY 23, 2014 at 10 AM (MST) / 1:00 P.M. (EDT)

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

APPLICATION FOR A STAY OF EXECUTION

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REQUEST FOR STAY OF EXECUTION

Pursuant to 28 U.S.C. § 2101(f), Petitioner Joseph Rudolph Wood III hereby requests a stay of his upcoming execution, currently scheduled for Wednesday, July 23, 2014, at 10:00 am MST (1:00 pm EDT). Concurrent with this document, Wood is filing a petition for writ of certiorari asking the Court to review an order of the United States Court of Appeals for the Ninth Circuit that denied his motion to stay his execution and his appeal asking the court to remand his case to the district court to withdraw its judgment and reopen his federal habeas corpus proceedings. This issue will become moot if Wood is executed as scheduled. *See Wainwright v. Booker*, 473 U.S. 935, 936 (1985) (Powell, J., concurring).

ARGUMENT

To obtain a stay of execution, a death-row prisoner must show that four factors, balanced against each other, weigh in his favor: (1) a likelihood of success on the merits; (2) a likelihood of suffering irreparable harm without a stay; (3) the balance of hardships tips in his favor; and (4) a stay is in the public interest. *See Rhoades v. Blades*, 661 F.3d 1202, 1203 (9th Cir. 2011) (citing *Beaty v. Brewer*, 649 F.3d 1071, 1072 (9th Cir. 2011)). Instead of showing a likelihood of success on the merits, a petitioner may alternatively demonstrate that “serious questions going to the merits” of his claims are presented in his appeal, and he may obtain a stay as long as the other three factors weigh in his favor. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011). In this case, Wood has presented a serious question about the conflicts between the Ninth Circuit’s order in this case,

prior decisions from that Court, and decisions from this Court and other circuit courts. These conflicts must be resolved to forestall the arbitrary application of improper standards of review to meritorious constitutional claims, and to clarify the cause-and-prejudice analysis for procedurally-defaulted claims of structural error.

1. Mr. Wood has presented serious questions about . . .

Mr. Wood's petition for certiorari asks the Court to resolve the question of whether, under *Barefoot v. Estelle*, 463 U.S. 880 (1983), a stay of execution should be granted to permit full briefing and judicial attention, for an execution scheduled tomorrow, when yesterday the district court issued a certificate of appealability acknowledging that "reasonable jurists could debate [the district court's] denial of Petitioner's Rule 60(b)(6) motion." This Court should grant Mr. Wood's petition for certiorari to resolve these serious questions going to the merits of Mr. Wood's claims, and accordingly, this factor weighs in Mr. Wood's favor as to the appropriateness of a stay of execution.

2. Mr. Wood will suffer irreparable harm absent a stay of execution.

Without a stay of execution, Wood will be executed on July 23, 2014, despite his meritorious constitutional claims regarding the ineffective assistance of counsel at trial and on appeal, and despite the inability to investigate and develop relevant and compelling mitigation evidence during both his state and federal proceedings. His execution would moot his appeal, and leave the serious questions raised in his petition for writ of certiorari unresolved. Thus, this factor also weighs in favor of a stay of execution.

3. The balance of hardships tips in Mr. Wood's favor.

Mr. Wood will suffer irreparable harm if the denial of his Sixth, Eighth, and Fourteenth Amendment rights results in his execution. Conversely, the State suffers no injury should this Court enter a stay to allow for plenary consideration of Mr. Wood's petition. Should this Court ultimately affirm the district court, the State's executioners presumably will be available to carry out Wood's execution. And if this Court should remand for further proceedings, then the state courts will have the first opportunity to cure constitutional errors in the administration of its criminal law. *See Engle v. Isaac*, 456 U.S. 107, 128 (1982) ("In criminal trials [the states] also hold the initial responsibility for vindicating constitutional rights."). Insofar as failing to grant a stay of execution imposes an irreparable hardship only on Mr. Wood and not the State, the third factor favors Mr. Wood as well.

4. A stay of execution is in the public interest.

Finally, a stay of execution is in the public interest. In general, the public interest is served by enforcing constitutional rights. *See Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005). This appeal focuses on Mr. Wood's Sixth, Eighth, and Fourteenth Amendment rights to effective assistance of counsel at trial and sentencing, to conflict-free counsel on direct appeal, and to individualized sentencing. The public interest weighs in favor of addressing these violations, and ensuring that Mr. Wood's sentence is constitutionally imposed before it is carried out by the State of Arizona on July 23, 2014.

CONCLUSION

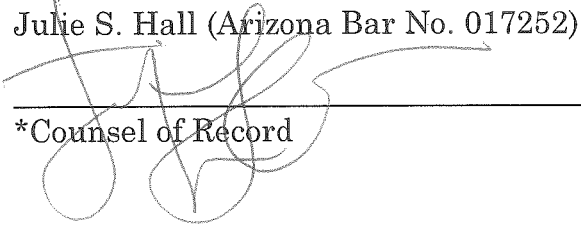
For the foregoing reasons, the considerations for granting a stay of execution weigh in Mr. Wood's favor, and thus Mr. Wood requests that this Court enter a stay of execution to permit it to fully consider this appeal without it becoming moot by virtue of his execution.

Respectfully submitted: July 22, 2014.

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