

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

No. 14-16380

JOSEPH RUDOLPH WOOD, et al.,

Plaintiffs,

v.

CHARLES L. RYAN, et al.,

Defendants.

ON APPEAL FROM THE UNITED
STATES DISTRICT COURT FOR
THE DISTRICT OF ARIZONA,
No. CV-98-00053-TUC-JGZ

**RESPONSE IN OPPOSITION TO
EMERGENCY MOTION FOR
STAY**

Petitioner-Appellant, Joseph R. Wood III asks this Court for an emergency order staying his execution scheduled for Wednesday, July 23, 2014, at 10:00 a.m. Wood moves for a stay pending this Court’s resolution of his appeal of the district court’s denial of his motion for relief from judgment under Federal Rule of Civil Procedure 60(b)(6). Because Wood has not shown an extraordinary circumstance warranting habeas relief, he cannot make a clear showing that he has a significant possibility of success on the merits and his motion should be denied.

A. APPLICABLE LAW.

“A stay is not a matter of right, even if irreparable injury might otherwise result.” *Nken v. Holder*, 556 U.S. 418, 433 (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.* (citing cases). While a stay involves the exercise of judicial discretion, it is not

unbridled discretion; legal principles govern the exercise of discretion. *Id.* Moreover, “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)). Equity does not tolerate last-minute abusive delays “in an attempt to manipulate the judicial process.” *Nelson*, 541 U.S. at 649 (quoting *Gomez*). “Repetitive or piecemeal litigation presumably raises similar concerns” as litigation that is “speculative or filed too late in the day.” *Hill*, 547 U.S. at 585. *See also Gomez v. United States Dist. Court for Northern Dist. of Cal.*, 503 U.S. 653, 654 (1992) (per curiam) (noting that the “last-minute nature of an application” or an applicant’s “attempt at manipulation” of the judicial process may be grounds for denial of a stay).

II. WOOD DOES NOT MERIT A STAY OF EXECUTION.

1. *Likelihood of success.*

Wood’s request should be denied because there is no likelihood of success on the merits. The district court appropriately determined that, insofar as it related to Habeas Claim X(C)(3), Wood’s Rule 60(b) motion constituted an unauthorized SOS petition. Wood exhausted Claim X(C)(3) in state court and the district court

denied it on the merits. Although Wood asserts that his current argument relates to the habeas proceeding's integrity because the district court denied what he considered critical investigative funding, in reality he sought to litigate anew the claim's merits. The district court properly refused these efforts.

Likewise, the district court did not abuse its discretion by denying Wood's Rule 60(b)(6) motion relating to Habeas Claims VI, X(C)2, and XI(A) because Wood failed to show that Martinez constituted an extraordinary circumstance warranting relief from judgment. The *Phelps* factors, on balance, tip sharply in the State's favor, where a warrant of execution has issued and where Wood failed for 2 years to pursue his remedies, filing his motion on the eve of his execution. Further, the court did not abuse its discretion by finding that Martinez does not apply to Claim VI, which alleges trial court error rather than counsel's ineffectiveness, or by finding that Wood had altered Claim X(C)(2)'s factual basis from that originally presented and transformed it into a new claim that he could not properly raise in a Rule 60(b)(6) motion. Further, the court did not abuse its discretion by finding that neither Claim X(C)(2) nor Claim XI(A) was substantial under *Martinez*, as both claims fail for lack of prejudice, even if Wood were allowed to present his claims raised in his Rule 60(b)(6) motion at this late date. Respondents will rely on the arguments made in their simultaneously filed Answering Brief.

2. Irreparable harm and balance of equities.

Absent a showing of a constitutional violation, Wood fails to show irreparable harm. At this late date, the balance of equities weigh against granting a stay of execution. Wood has had the opportunity to raise any *Martinez* claims in the past. Moreover, as the district court found, his claims are not significant under *Martinez*.

3. Interests of Justice.

Equity must be sensitive to the State's strong interest in enforcing its criminal judgments[.]” *Hill*, 547 U.S. at 584. “Both the State and the victims of crime have an important interest in the timely enforcement of a sentence.” *Id.* The interests of justice here weigh against granting a stay of execution.

4. The granting of a COA does not stay the execution.

After denying Wood's Rule 59(e) motion, the district court granted a COA “to the extent [a COA] is needed” (Dist. Ct. Doc. No. 126 at 5.) Wood argues that this requires a stay of execution citing *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983). But *Barefoot* does not require a stay of execution simply because issues remain outstanding. “Furthermore, unlike a term of years, a death sentence cannot begin to be carried out by the State while substantial legal issues remain outstanding. Accordingly, federal courts must isolate the exceptional cases where constitutional error requires retrial or resentencing as certainly and swiftly as orderly procedures will permit.” *Barefoot*, 463 U.S. at 888. Here, the claims

Wood raised in his Rule 60(b)(6) motion are not the type of exceptional claims of constitutional error requiring relief at this late date. The granting of a COA does not mandate a stay of execution or abrogate the requirements necessary for a stay of execution—it simply encourages debatable issues to proceed further. *Slack v. McDaniel*, 529 U.S. 473, 483–84 (2000). This Court can review this record and determine, like the district court, that Wood’s claims are not substantial and that relief is not warranted. For the reasons stated above, Wood fails to demonstrate any showing that he is entitled to a stay of execution.

RESPECTFULLY SUBMITTED this 22nd day of July, 2014.

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CERTIFICATE OF SERVICE

I hereby certify that 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 on July 22, 2014.

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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