

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION AT CLEVELAND**

QUISI BRYAN, :
 :
 Petitioner, : **CASE NO. 1:11-cv-60**
 :
 v. :
 : **JUDGE JAME G. CARR**
DAVID BOBBY, WARDEN :
 :
 Respondent. : *Death Penalty Case*

RESPONDENT'S MOTION FOR STAY PENDING APPEAL

Respondent moves the Court, pursuant to Fed. R. App. Proc. 8, Fed. R. App. Proc. 23, and Fed. R. Civ. Proc. 62, for a stay pending appeal of the Court's Order granting Inmate Bryan a conditional writ of habeas corpus. Order, Doc #72, PageID # 8835. A memorandum in support follows.

Respectfully submitted,

MICHAEL DEWINE
Ohio Attorney General

s/ David M. Henry

DAVID M. HENRY (0056084)
Assistant Attorney General
Criminal Justice Section, Capital Crimes Unit
150 East Gay Street, 16th Floor
Columbus, Ohio 43215-3428
(614) 728-7055; (614) 728-8600 (fax)
Email: david.henry@ohioattorneygeneral.gov

COUNSEL FOR WARDEN

MEMORANDUM IN SUPPORT

On July 16, 2015, the Court granted a writ of habeas corpus and ordered the State of Ohio to either release Bryan from custody or to retry him within 120 days from the date of the Order as a result of a *Batson v. Kentucky*, 476 U.S. 79 (1986), violation. Respondent Warden respectfully moves the Court to issue a stay of the Order pending the resolution of Respondent's appeal from that Order to the United States Court of Appeals for the Sixth Circuit.

Respondent has had an opportunity to conduct a complete review and evaluation of the Court's Order and believes that an appeal is appropriate. Respondent intends to initiate appellate proceedings as soon as possible and believes a stay is necessary in this case as a retrial may not be needed after appellate review. Fed.R. App.Proc. 8(a)(1) directs parties to first move a district court for a stay of a judgment or order pending appeal. Therefore, Respondent requests the Court grant a stay. For the reasons more fully explained below, a stay will preserve the status quo and will not prejudice Bryan as he is currently incarcerated on additional state convictions.

In *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987), the Supreme Court established factors to determine whether a successful habeas petitioner should be released pending a respondent's appeal: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." Additionally, the "State's interest in continuing custody and rehabilitation pending a final determination of the case on appeal is also a factor to be considered; it will be strongest where the remaining portion of the sentence to be served is long, and weakest where there is little of the sentence remaining to be served." *Id.* at 777. All of these factors support granting a stay.

Petitioner Bryan is currently incarcerated at an Ohio penal institution as a result of his state conviction for killing Cleveland Police Officer Wayne Leon for which he received a sentence of death.¹ As the Court noted, Bryan “did not dispute that he killed Officer Leon.” Order, Doc #72, PageID # 8840. The public interest in maintaining Bryan’s conviction is overwhelming. Further, Respondent firmly believes he is likely to succeed on appeal because the trial prosecutors gave valid, race-neutral reasons for using a peremptory challenge to remove Chrystal Jones; reasons which were previously upheld by the reviewing state courts. Finally, unlike the State, Bryan will not be substantially injured by a stay because he will remain incarcerated on different state conviction.

For all of these reasons, a stay is necessary and appropriate in this case. This Court’s Order should be stayed until it is reviewed on appeal.

Respectfully submitted,

MICHAEL DEWINE
Ohio Attorney General

s/ *David M. Henry*

DAVID M. HENRY (0056084)
Assistant Attorney General
Criminal Justice Section, Capital Crimes Unit
150 East Gay Street, 16th Floor
Columbus, Ohio 43215-3428
(614) 728-7055; (614) 728-8600 (fax)
Email: david.henry@ohioattorneygeneral.gov

COUNSEL FOR WARDEN

¹ Petitioner Bryan is also incarcerated for various sexual offenses.

CERTIFICATE OF SERVICE

I hereby certify that on July 20, 2015, a copy of the forgoing document, Respondent's Motion for Stay Pending Appeal, was filed electronically. Notice of this filing has been sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's system.

Respectfully submitted,

s/ *David M. Henry*

DAVID M. HENRY (0056084)
Assistant Attorney General