

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DARYL KEITH HOLTON)	
)	
Petitioner-Appellant)	
)	
v.)	No. 06-6178
)	DEATH PENALTY CASE
RICKY BELL, Warden)	EXECUTION DATE
)	September 19, 2006
Respondent-Appellee)	

REPLY TO RESPONSE TO
MOTION FOR STAY OF EXECUTION

Respondent's argument that the Court lacks jurisdiction to entertain an appeal in this case is contrary to this Court's decision in *Harper v. Parker*, 177 F.3d 567 (6th Cir. 1999). Respondent argues that this Court lacks jurisdiction to grant a stay of execution because no valid habeas petition had been filed. (Response to Stay Motion, at 11). Whether there was reasonable cause to believe that Holton was incompetent so as to excuse the fact that he had not authorized the habeas petition is precisely the issue to be litigated in this appeal. Further, this argument is contrary to the finding of the district court which granted a certificate of appealability on its own decision to dismiss the habeas petition because Holton had failed to meet the reasonable cause burden.

This Court should grant this stay of execution in order to review the novel

and unprecedented procedures utilized by the district court. Petitioner presented a strong showing of reasonable cause to believe Holton may be incompetent. 18 U.S.C. § 4241. Dr. Woods opined Holton suffers from complex Post-Traumatic Stress Disorder and depression and major mental illnesses affect his ability to think rationally. (R.27). Dr. Woods indicated a fuller evaluation was needed to cement this tentative diagnosis. *Id.* The evidence raised a bona fide question of Holton's competence.

The district court's actions in imposing the additional burden of overcoming the subsequent opinion of Dr. Seidner was unprecedented and in violation of *Harper*. After receiving Petitioner's evidence of incompetence,¹ the district court denied Petitioner's motion to have Holton examined by Dr. Woods and instead decided to have Holton examined by the court's own expert. Only after hearing from this expert did the court determine that Petitioner had failed to meet his burden under *Harper*. The court explicitly withheld reaching this determination based only on the evidence presented by Petitioner. (R.34). Instead the court relied on its own expert to rebut the evidence already presented in these

¹In his Response to the Stay Motion, Respondent criticizes Petitioner's evidence that was submitted in affidavit form. (Response at p. 14) Respondent never complained about this matter in the proceedings below and the district court considered the affidavit evidence in its determination of whether the *Harper* standard had been met.

proceedings.

It must be emphasized that the proceedings below do not represent an evidentiary hearing pursuant to *Harper*. Rather, Petitioner presented evidence of incompetence that the district court erroneously found insufficient to meet the *Harper* standard because it did not overcome the subsequent opinion of Dr. Seidner. The correctness of the decision by the trial court to require Petitioner to rebut additional evidence is the subject of this appeal.

Despite all of the procedural irregularities in the proceedings, counsel more than met the burden for showing reasonable cause to believe petitioner may be incompetent. Caselaw from this circuit shows that sufficient evidence to warrant a full evidentiary hearing on Holton's competence was presented to the district court. In *United States v. Jackson*, 2006 WL 1208077 (6th Cir., May 4, 2006), this Court found reasonable cause to believe the defendant may be incompetent, based upon counsel's observations of the defendant, talks with the defendant's mother, social worker observations, and prior history of mental illness. This Court determined an adversarial hearing, with all the safeguards provided in *Harper*, was warranted.

In the present case, Holton offered more proof than was presented in *Jackson*. He offered the affidavit from Holton's post-conviction attorney that she

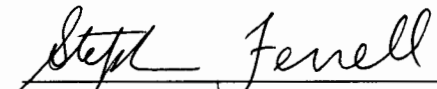
was unable to engage Holton in rational conversation about his legal options. (R.44, Exh. 2, Affidavit of Kelly Gleason). Holton offered the affidavit of his father that he believed his son was irrational. (R.3, Exh. K, Affidavit of Ernest Holton). It is uncontested that Holton has an extensive history of major mental illness. Finally, Dr. Woods found Holton suffers depression and complex Post Traumatic Stress Disorder and that these mental illnesses affect his thought processes about federal habeas corpus and available legal avenues for relief. (R.27). *See also United States v. Walker*, 301 F.2d 211 (6th Cir. 1962) (request by counsel for evaluation and allegations of past institutionalization were relevant in finding reasonable cause); *United States v. Nichols*, 661 F.Supp.507 (M.D.Mich. 1987) (attorney claim that client did not respond appropriately to discussions of risk concerning charges, defendant's bizarre statements to U.S. Attorney, and defendant's depression were all relevant in finding reasonable cause). This evidence was sufficient to invoke the *Harper* procedures.

Petitioner has demonstrated far more than “an arguable basis for finding that a full evidentiary hearing on competence should have been held by the district court.” *Demosthenes v. Baal*, 495 U.S. 731, 733-34 (1990). The district court was wrong to impose the additional burden of overcoming Dr. Seidner's testimony without a full evidentiary hearing pursuant to *Harper*. For these reasons, this

Court must grant a stay of execution in order to fully review these issues.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Stephen A. Ferrell, hereby certify that a true and correct copy of the foregoing document was served by first class mail, postage prepaid, and by email to:

Jennifer L. Smith, Esq.
Office of Attorney General and Reporter
Criminal Justice Division
P.O. Box 20207
Nashville, TN 37202

this the 14th day of September, 2006.


Stephen Ferrell