

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE**

PAUL GREGORY HOUSE,)	
)	
Petitioner,)	
)	
v.)	No. 3:96-cv-883
)	Judge Mattice
RICKY BELL, Warden,)	CAPITAL CASE
)	
Respondent.)	

**MOTION FOR STAY OF JUDGMENT
PENDING APPEAL**

Respondent respectfully moves for a stay of this Court’s judgment pending completion of an appeal to the United States Court of Appeals for the Sixth Circuit. On December 20, 2007, this Court entered an order granting a conditional writ of habeas corpus to petitioner, Paul Gregory House, after finding that his constitutional rights had been violated during his 1986 capital murder trial in Union County, Tennessee. The court directed that petitioner’s conviction and sentence be vacated “unless the State of Tennessee commences a new trial against him within 180 days after this judgment becomes final.” [Doc. Entry No. 346, p. 18] The Court’s conditional writ is consistent with the long-held construction of 28 U.S.C. § 2243, which permits federal courts to delay the release of a successful habeas petitioner in order to provide the State an opportunity to correct any constitutional violation found by the court. *Hilton v. Braunskill*, 481 U.S. 770, 775 (1987). If the judgment is not stayed, however, House would be subject to release unless the State retries him before its appeal is concluded, thus defeating Tennessee’s ability to vindicate its existing criminal judgment through its appeal as of right. *See also* Fed. R. App. P. 23(c) (“While a decision ordering the release of a prisoner is under review, the prisoner must — unless the court or judge rendering

the decision, or the court of appeals or the Supreme Court, or a judge or justice of either court orders otherwise — be released on personal recognizance, with or without surety.”).

Under 28 U.S.C. § 2253, the final order in a habeas corpus proceeding is subject to review on appeal by the court of appeals for the circuit in which the proceeding is held. *See also* 28 U.S.C. § 1291 (“The courts of appeals . . . shall have jurisdiction of appeals from all final decisions of the district courts of the United States . . .”). Contemporaneous with the filing of this motion, the respondent is filing a timely notice of appeal to the United States Court of Appeals for the Sixth Circuit indicating its intent to pursue his appeal as of right from this Court’s order pursuant to Fed. R. App. P. 3 and 4(a)(1). The Court should stay execution of its judgment to allow respondent the opportunity to avail himself of the full appellate process.

In *Hilton*, the Supreme Court held that, in determining whether to stay a judgment in a habeas corpus proceeding, federal courts should apply the traditional standards governing stays of civil judgments, namely: (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 the stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies. 481 U.S. at 778. Each of the factors weighs in favor of a stay of the Court’s December 20, 2007, order directing release of the petitioner unless the State commences a retrial within 180 days.

1. Likelihood of Success on the Merits

The State’s appeal to the Sixth Circuit presents substantial questions of constitutional law. In granting summary judgment, this Court concluded that House was entitled to relief on Claim 42 (Prosecutorial Misconduct—Intentional Withholding of Exculpatory Evidence), Claim 55

(Ineffective Assistance of Trial Counsel — Failure to Adequately Investigate Guilt/Innocence) and Claim 57 (Ineffective Assistance of Trial Counsel — Failure to Call All Available Witnesses that would have Benefitted the Defense). As to the *Brady* violation (Claim 42), the record fails to show that the State in fact withheld *any* of the materials in question, and this Court made no finding in that regard. Instead, the Court concluded that, even if the materials were not withheld, counsel was ineffective for failing to utilize the information. However, petitioner failed to prove — and this Court failed to find — either that the evidence in question was suppressed or that counsel possessed it. By conflating petitioner’s *Brady* claim with his corresponding ineffective assistance claim, the Court erroneously relieved the petitioner of his burden of proof on *both* issues.

Moreover, the Court’s analysis of materiality under *Brady v. Maryland*, 373 U.S. 83 (1963), and prejudice under *Strickland v. Washington*, 466 U.S. 668 (1984), misinterprets the import of the opinion of the United States Supreme Court in *House v. Bell*, 126 S.Ct. 2064 (2006), which is not relevant to the analysis of *Brady* and *Strickland* claims. Viewing these claims in light of the circumstances known at the time of trial and without the distortion of hindsight, it is clear that trial counsel developed many, if not all of the same defenses and themes House now asserts, and House was not prejudiced by the failure to present the additional evidence identified in his summary judgment motion. *See also House*, 126 S.Ct. at 2093 (Roberts, C.J., dissenting) (observing that, even in light of the evidence presented at the federal evidentiary hearing, “the case against House remains substantially unaltered from the case presented to the jury”). The Supreme Court’s decision remanded this case for consideration of House’s procedurally defaulted claims under the appropriate legal standards. It did not dictate the outcome of those claims.

Conversely, this Court’s analysis ignores the relevant factual and credibility determinations

previously made in this case. [Doc. Entry No. 285] For example, the Court's memorandum makes no mention whatsoever of the previous findings concerning the timing of the blood spillage and the credibility of lay witnesses, both of which are directly relevant to an assessment of prejudice under *Strickland*. Moreover, even this Court acknowledged Sixth Circuit authority to the effect that the failure to present witnesses who are cumulative or unreliable does not constitute ineffective assistance of counsel. *United States v. Pierce*, 62 F.3d 818, 833 (6th Cir. 1995). Yet, the Court failed to follow this authority when it concluded that trial counsel was ineffective for failing to present cumulative testimony concerning marital difficulties in the Muncey family.

Given these deficiencies in the Court's analysis, there is a reasonable likelihood that the State will prevail in its appeal. A stay is thus appropriate to permit respondent to pursue its appeal to conclusion.

2. Irreparable Harm to the Applicant

The State of Tennessee risks irreparable harm absent a stay of the court's judgment. In *Hilton*, the Court recognized that the State's interest in continuing custody pending a final determination of the case on appeal is a factor that may be considered, and this factor is strongest where "the remaining portion of the sentence to be served is long." *Hilton*, 481 U.S. at 777. This factor is particularly strong here, where the petitioner faces a death sentence rather than one for a term of years. Moreover, the State's interests in the finality of its criminal judgments, which attach to the State and the victims of crime alike, are compelling. *Calderon v. Thompson*, 523 U.S. 538, 556 (1998). Finally, as noted above, if the judgment is not stayed, House would be subject to release unless the State commences a new trial before its appeal is concluded, thus effectively defeating the State's ability to appeal the judgment in this case.

3. No Substantial Injury to Other Parties

Even though this Court has determined that petitioner's judgment of conviction is constitutionally infirm, that determination may be overturned on appeal. Moreover, even if the State is ultimately unsuccessful in its appeal, petitioner still faces a retrial in Union County, Tennessee, for first degree murder, which would commence if the Court's grant of habeas relief is upheld. In *Hilton*, the Supreme Court recognized that a successful habeas petitioner, like the petitioner here, who has been adjudged guilty beyond a reasonable doubt and whose conviction has been upheld by the appellate courts of the State, is in a considerably less favorable position than a pretrial arrestee to challenge his continued detention pending appeal. 481 U.S. at 779. Further, given the strength of the State's interest in petitioner's continued custody until execution of his death sentence, petitioner's interest in release pending appeal is weak. *See Hilton*, 481 U.S. at 777-78 (strength of petitioner's interest in release is weakened in direct proportion to the strength of the State's interest in continued custody under the preceding factor). Thus, any claimed liberty interest at this juncture is minimal at best.

4. The Public Interest

Finally, the public interest weighs heavily in favor of a stay. If House is released, the public may be harmed. Even ignoring the murder conviction that is the subject of this habeas corpus proceeding, petitioner's background demonstrates a propensity for violent criminal conduct. House pled guilty in 1981 to aggravated sexual assault in the State of Utah, a first degree felony for which he received an indeterminate sentence of five years to life imprisonment. The offense involved the rape and sodomization of a woman at knife-point. Another case involving similar allegations of forcible sodomy and rape of another woman was also filed with the County Attorney's Office in Salt

Lake City but was dismissed when House pled guilty in the first case.¹ See Judgment and Presentence Investigative Report, attached as Exhibits A and B. House pled guilty in 1984 to attempted escape from the Utah Department of Correction, a third degree felony in that state. Indeed, House had been on parole barely four months (for the Utah aggravated sexual assault conviction) when he committed the crime at issue in this case.² House's criminal background militates against his release during the pendency of the State's appeal, as there are reasonable grounds to believe that he poses a danger to the public.

CONCLUSION

The State of Tennessee has filed a timely notice of appeal from this Court's December 20, 2007, judgment order, and the balance of factors under *Hilton* weighs in favor of an order staying the Court's judgment pending appeal. Under these circumstances, a stay of the judgment is warranted.

Respectfully submitted,

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¹The two incidents were apparently unrelated and occurred one day apart.

²House's parole release date was effective on March 12, 1985. (Exhibit C) The murder of Carolyn Muncey occurred July 13, 1985.

CERTIFICATE OF SERVICE

I certify that the foregoing motion was filed electronically on this the 18th day of January, 2008. A copy of the document will be served via the Court's electronic filing process on: Stephen M. Kissinger, Federal Defender Services of East Tennessee, Inc., 530 South Gay St., Ste 900, Knoxville, TN 37902; and Michael S. Pemberton, Daniel, Pemberton, Scott & Scott, 9539 Kingston Pike, Knoxville, TN 37922

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