

Nos. 00-7620, 7621

IN THE
SUPREME COURT OF THE UNITED STATES

PHILIP R. WORKMAN,
Petitioner,

v.

RICKY J. BELL, Warden,
Respondent.

In re PHILIP R. WORKMAN,
Petitioner.

MOTION TO VACATE ORDER OF UNITED STATES
COURT OF APPEALS FOR THE SIXTH CIRCUIT
STAYING EXECUTION OF DEATH SENTENCE

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Counsel for Respondent

On the basis of petitioner Workman's previously filed Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit and Petition for Writ of Habeas Corpus,

on January 26, 2001, he filed with this Court an application to stay execution of his sentence of death, which is set for January 31, 2001. Later that same day, the United States Court of Appeals for the Sixth Circuit granted petitioner's motion to recall the mandate¹ and stay the execution of his death sentence pending disposition of the pleadings pending before this Court. For the same reasons that the application for a stay of execution filed with this Court should be denied, respondent submits that the Sixth Circuit's order recalling the mandate and issuing a stay of execution should be vacated.

¹ This mandate dissolved the Sixth Circuit's previously issued stay of execution pending rehearing en banc. Petitioner's motion was filed in the Sixth Circuit on December 14, 2000.

In order to secure a stay of execution, petitioner must demonstrate a substantial likelihood of success on the merits of his petitions. *See Bush v. Gore*, 121 S.Ct. 512 (2000) (order granting application for stay) (Scalia, J., concurring); *see also Delo v. Blair*, 509 U.S. 823 (1993) (per curiam) (particularly egregious to enter a stay of execution upon a second or subsequent habeas petition absent substantial grounds on which relief may be granted). For all of the reasons set forth in respondent's brief in opposition to the Petition for Writ of Certiorari, the petition is without merit and should be denied. Likewise, and for all the reasons set forth in respondent's brief in opposition to the Petition for Writ of Habeas Corpus,² that petition is also without merit and should be denied. Accordingly, petitioner has not demonstrated and cannot demonstrate a substantial likelihood of success on the merits of either of these petitions.

The motion to vacate the lower court's order staying execution of petitioner's death sentence should be granted.

² With respect to petitioner's effort to present a freestanding habeas claim of actual innocence under *Herrera v. Collins*, 506 U.S. 390 (1993), and respondent's reference in his Brief in Opposition to a January 25, 2001, hearing on petitioner's renewed application for executive clemency, *see* Respondent's Brief in Opposition, p. 22 n. 39, respondent further informs the Court that, at the conclusion of the January 25 hearing, the Tennessee Board of Probation and Parole announced its non-binding recommendation, by a vote of 6-0, that the governor of Tennessee deny the application for clemency.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing document has been forwarded to counsel for the petitioner by facsimile to Christopher M. Minton, Office of the Post-Conviction Defender, 530 Church Street, Suite 600, Nashville, Tennessee 37243 on this the 26th day of January, 2001.

JOSEPH F. WHALEN
Assistant Attorney General