

No. 05A1209

IN THE
SUPREME COURT OF THE UNITED STATES

SEDLEY ALLEY,
Petitioner,

v.

GEORGE LITTLE, et al.,
Respondents.

ON MOTION FOR STAY OF EXECUTION

RESPONDENTS' BRIEF IN OPPOSITION

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REASONS FOR DENYING THE APPLICATION

On May 16, 2006, petitioner moved this Court for a stay of execution, which was then scheduled for May 17, 2006, on the basis of his contemporaneously-filed petition for a writ of certiorari seeking review of the May 12, 2006, decision of the Sixth Circuit Court of Appeals. That decision vacated a preliminary injunction and stay of execution that had been issued by the district court pending a decision by this Court in *Hill v. McDonough*, No. 05-8794 (U.S.). Later on May 16, 2006, a fifteen-day executive reprieve was granted petitioner, which rendered his motion moot. On June 2, 2006, upon the expiration of the reprieve, the Tennessee Supreme Court re-set the execution of petitioner's sentence for June 28, 2006. Petitioner has now renewed his motion for a stay.

Petitioner's renewed motion should be denied. For the reasons set forth in respondent's brief in opposition to both the original motion and the petition for a writ of certiorari, the questions presented in the petition do not warrant this Court's review. Indeed, on June 12, 2006, this Court decided *Hill v. McDonough*, __ S.Ct. __, 2006 WL 1584710 (2006), which would have effectively dissolved the preliminary injunction and stay issued by the district court had it not been vacated by the Sixth Circuit. Consequently, the petition for a writ of certiorari is now itself moot.

Moreover, recent events have overtaken the issues presented in the petition. On June 14, 2006, two days after *Hill* was decided, the district court dismissed petitioner's

§ 1983 complaint as untimely, relying on the Sixth Circuit’s previous determination that petitioner had unnecessarily delayed in bringing his claims. *See Alley v. Little*, No. 06-5650, slip op., p. 6 (6th Cir. May 12, 2006) (“[Plaintiff] was on notice as to both the particulars of the protocol and the availability of making a claim such as the one he now raises for several years before he filed his last-minute complaint.”). On June 24, 2006, the Sixth Circuit affirmed the judgment of the district court, reiterating that “[petitioner’s] filing was very late in coming.” *Alley v. Little*, No. 06-5816, slip op., p. 5 (6th Cir. June 24, 2006) (copy attached). The Court also reaffirmed its view “of the very small likelihood of [petitioner’s] success on the merits” of his claims. *Id.*

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been delivered electronically and by first-class mail, postage prepaid, to Paul Bottei, Assistant Federal Public Defender, 810 Broadway, Suite 200, Nashville, Tennessee, 37203, on this the 26th day of June, 2006.

/s/ Joseph F. Whalen

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