

No. 06-5861

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

JUN 28 2006

LEONARD GREEN, Clerk

SEDLEY ALLEY,)

Petitioner)

v.)

O R D E R

RICKY BELL, Warden,)

Riverbend Maximum Security)

Institution,)

Respondent)

Before: BOGGS, Chief Circuit Judge, and RYAN, Circuit Judge*

Acting pursuant to a claim brought under 28 U.S.C. §2241, a single circuit judge has granted a stay of execution while considering a claim of actual innocence supposed to be provable by DNA testing.

Passing over the question of the seemliness of a single circuit judge taking under consideration a matter for which the district courts (under 28 U.S.C. §2241) and the court of appeals (on a motion for leave to file a second or successive habeas petition) are competent to consider, we note that the granting of a stay of execution is subject to the same 4-part test in *Michigan Coalition of Radioactive Material Users, Inc. v. Griepentrog*, 945 F.2d 150, 153 (6th Cir. 1991), that our court set out in *Alley v. Little*, 2006 WL 1313365 (6th Cir. May 12, 2006). For the same reasons we set out there in vacating the stay of execution, we hold that the standards for a stay of execution have even less been met at this time, considering that, on the merits, a wide variety of claims, a number of them

* BATCHELDER, Circuit Judge, was unavailable to participate in this decision.

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touching on the possibility of DNA testing, have been raised to the district court, to the duly authorized panel of this court, to the Court of Appeals on applications for en banc consideration, and to the Supreme Court of the United States. All have ultimately been rejected.

We therefore VACATE the stay of execution granted by a single circuit judge and entered in the records of the District Court for the Middle District of Tennessee.

ENTERED BY ORDER OF THE COURT



Leonard Green, Clerk