IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

PHILIP RAY **WORKMAN**,	)	
	)	
Petitioner,	)	No.
	)	
v.	)	**EXECUTION DATE 9/24/03 1:00 a.m.**
	)	
RICKY **BELL**, Warden, Riverbend	)	
Maximum Security Institution,	)	
	)	
Respondent.	)	

MOTION FOR STAY OF EXECUTION

Petitioner Philip Ray Workman, pursuant to 28 U.S.C. §2251 and this Court's inherent authority, respectfully moves this Court to enter a stay of execution (currently scheduled for September 24, 2003, at 1:00 a.m.) to allow proper consideration on the merits of his petition for writ of habeas corpus, filed today. Mr. Workman's petition for writ of habeas corpus is a *first* petition, and represents his first and only opportunity to receive federal review of claims which only became ripe after the completion of Mr. Workman's initial habeas corpus proceeding. See Petition For Writ Of Habeas Corpus, filed contemporaneously with this stay motion, at ¶¶ 1-8. Thus, this Court may properly issue a stay of execution to allow consideration of the petition on the merits, especially since Mr. Workman's life is at stake. Lonchar v. Thomas, 517 U.S. 314, 116 S.Ct. 1293 (1996).

The mere fact that Mr. Workman's contemporaneously filed habeas petition is a *first* petition and is not frivolous is sufficient to warrant a stay of execution pending a final resolution of the claims in federal court. Moreover, a stay of execution is further warranted, given that this case involves factual issues which require further development in this court. This Court should issue a stay of execution and set the case for further proceedings which will ensure that Mr. Workman will

receive a full and fair adjudication of his claims on federal habeas review.

In support of this motion, Mr. Workman respectfully notes:

1. The United States Supreme Court has made clear that when considering an initial petition for writ of habeas corpus, the United States District Court must issue a stay of execution if necessary to allow consideration of the petition on the merits:

> [W]hen a district court is faced with a request for a stay in a first federal habeas case: If the district court cannot dismiss the petition on the merits before the scheduled execution, *it is obligated to address the merits and must issue a stay to prevent the case from becoming moot.*

Lonchar v. Thomas, 517 U.S. 314, 320, 116 S.Ct. 1293, 1297 (1996)(emphasis supplied). Compare Barefoot v. Estelle, 463 U.S. 880, 103 S.Ct. 3383 (1983)(on appeal of first habeas petition, where petitioner has obtained certificate of probable cause to appeal, petitioner entitled to review of merits of petition: to allow consideration of merits of appeal, court of appeals should grant stay to prevent case from becoming moot).

2. This is settled law, and has been fully acknowledged by the lower courts, including this Court. See e.g., Cone v. Bell, 956 F.Supp. 1401, 1403 (W.D.Tenn. 1997)(acknowledging holding in *Lonchar* and granting stay to consider first federal habeas petition); Abdur-Rahman v. Bell, 927 F.Supp. 262, 263 (M.D.Tenn. 1996)("[A] district court is obligated to issue a stay of execution upon the filing of a first habeas petition, to prevent the case from being moot, if the district court cannot dismiss the petition on the merits before the scheduled execution: stay granted where "claims are substantial enough to prevent summary dismissal of the petition.").

3. As discussed in ¶¶ 1-8 of Mr. Workman's contemporaneously filed Petition For Writ Of Habeas Corpus, the claims raised in that petition came into existence only after the conclusion

of the prior habeas proceeding. Because those claims thus constitute a first petition for writ of habeas corpus, Lonchar mandates a stay of execution: "If the district court cannot dismiss the petition on the merits before the scheduled execution, *it is obligated to address the merits and must issue a stay to prevent the case from becoming moot*." Lonchar v. Thomas, 517 U.S. at 320, 116 S.Ct. at 1297 (emphasis supplied).

4. With this Court being required to resolve Mr. Workman's claims on the merits, a stay is also both necessary and warranted under the unique circumstances of this case, given the complexity of the issues presented and the need for further proceedings

5. Mr. Workman retains "the important right" to have his "*claims thoroughly considered by the district court*." Lonchar, 517 U.S. at 326, 116 S.Ct. at 1300 (emphasis supplied).

6. This Court has the discretion to consider Mr. Workman's claims and to dispose of the case "as law and justice require." 28 U.S.C. §2243. If not dismissing a petition as frivolous, "[T]he district court is . . . authorized to 'take such other action as the judge deems appropriate.'" Lonchar, 517 U.S. at 325, 116 S.Ct. at 1299, quoting Habeas Corpus Rule 4.

7. In sum, therefore, this Court should issue a stay because:

a. This is a *first* habeas petition;

b. This Court has the duty to resolve the petition on the merits under Lonchar v. Thomas, supra;

c. This Court is required to determine the cause "as law and justice require" 28 U.S.C. §2243 and has the discretion to conduct further proceedings in a manner to achieve that goal, See also Habeas Rule 4; and

e. Substantial factual and legal issues are presented by the petition.

CONCLUSION

WHEREFORE, this Court should grant a stay of execution, pending further review of this

case by this Court, the filing of the complete state court record, necessary briefing and argument, an

evidentiary hearing, and final resolution of the petition on the merits by the federal courts .

                                        Respectfully Submitted,

                                        Paul R. Bottei
                                        Christopher M. Minton
                                        Kelley J. Henry
                                        Office of the Federal Public Defender
                                        Middle District of Tennessee
                                        810 Broadway, Suite 200
                                        Nashville, Tennessee 37203
                                        (615) 736-5047

                                        By: _____

                        CERTIFICATE OF SERVICE

        I hereby certify that a true and exact copy of the foregoing has been hand-delivered to Paul
Summers, Office of the Attorney General, 425 5th Avenue North, Nashville, Tennessee 37243 on
this ___ day of _____.

                                        _____