

05A1208

Supreme Court, U.S.

FILED

JUN 26 2006

CLERK

CAPITAL CASE  
EXECUTION DATE: 6/28/06 at 1:00 a.m.

05-10958  
~~NO. 05-A1041~~

---

IN THE  
SUPREME COURT OF THE UNITED STATES

---

SEDLEY ALLEY,

*Petitioner,*

v.

WILLIAM KEY,  
*Defendant-Respondent;*

WILLIAM L. GIBBONS,  
*Intervenor-Respondent*

---

ON PETITION FOR WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

---

MOTION FOR STAY OF EXECUTION

---

Paul R. Bottei  
Kelley J. Henry  
Gretchen L. Swift  
Office of the Federal Public Defender  
810 Broadway, Suite 200  
Nashville, Tennessee 37203  
(615) 736-5047  
(615) 736-5265 (FAX)

\* Barry C. Scheck  
Vanessa Potkin  
Colin Starger  
THE INNOCENCE PROJECT  
100 Fifth Avenue, 3<sup>rd</sup> Floor  
New York, New York 10011  
(212) 364-5361  
(212) 364-5341 (FAX)

\* *Counsel Of Record*

This case presents what Judge Luttig has called “one of the most important criminal law issues of our day,” Harvey v. Horan, 285 F.3d 298, 304 (4<sup>th</sup> Cir. 2002)(Luttig, J., concurring): Whether the Constitution provides a right to post-conviction access to evidence for DNA testing to establish actual innocence. Judge Luttig has concluded that such a right exists. Id. Sedley Alley faces execution on June 28, 2006, despite his actual innocence. He has filed an accompanying Petition for Writ of Certiorari asking this Court to review this question of exceptional national importance.

The State has arbitrarily blocked Sedley Alley’s access to evidence containing biological samples from the true perpetrator for more than two years. The Sixth Circuit Court of Appeals is the only Circuit to squarely address the critical question of the federal constitutional right to DNA testing. The lower Courts await the guidance of this Court on this important issue.

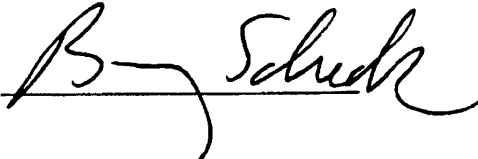
This Court has the authority to issue a stay of execution to maintain jurisdiction over this case. If this Court does not act, Mr. Alley will be executed and the cause of action moot. This result is intolerable, where, as Judge Luttig recognizes, there is a clear right under the federal constitution to DNA testing and Mr. Alley has already alleged clear evidence of his actual innocence. An innocent man could be executed while being deprived of his right to prove his innocence because the State withheld evidence of innocence in a shell game that lasted over nineteen years and then blocked access to the evidence in order to cabin Alley’s claim as eleventh hour. This Court must enter a stay of execution and answer these questions.

Respectfully Submitted,

Barry C. Scheck  
Vanessa Potkin  
Colin Starger  
THE INNOCENCE PROJECT  
100 Fifth Avenue, 3<sup>rd</sup> Floor  
New York, New York 10011  
(212) 364-5361  
(212) 364-5341 (FAX)

Paul R. Bottei  
Kelley J. Henry  
Office of the Federal Public Defender  
810 Broadway, Suite 200  
Nashville, Tennessee 37203  
(615) 736-5047  
FAX (615)736-5265

By:

A handwritten signature in black ink, appearing to read "Barry C. Scheck", is written over a horizontal line. The signature is fluid and cursive, with a large initial "B" and a long, sweeping underline.

CERTIFICATE OF SERVICE

I affirm that a copy of the foregoing has been forwarded to Jennifer Smith, 425 Fifth Avenue North, Nashville, Tennessee 37202, this the 26<sup>th</sup> day of June, 2006.

Paul R. Betti