

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

LINDA MARTINIANO,)
next friend on behalf of)
Paul Dennis Reid) NO. 3:07-cv-1058
v.) JUDGE CAMPBELL
GEORGE LITTLE, et al.)

ORDER

Pending before the Court is Plaintiff's Motion For Stay of Execution (Docket No. 20). Defendants have filed a Response in Opposition (Docket No. 25). Plaintiff has filed a Reply (Docket No. 32), and the Court heard argument on the Motion on December 18, 2007. Both sides stated they did not want an evidentiary hearing.

For the reasons which follow, Plaintiff's Motion is GRANTED.

Paul Dennis Reid is a death-sentenced inmate in the custody of the Tennessee Department of Corrections and is currently scheduled to be executed on January 3, 2008. State v. Reid, 213 S.W. 3d 792 (Tenn. 2006). Reid was convicted and sentenced to death in Davidson County Criminal Court, and the Tennessee Supreme Court has affirmed the conviction and death sentence.¹ This action does not challenge Reid's conviction or his sentence of death.

In this action, brought pursuant to 42 U.S.C. § 1983, Plaintiff challenges, as unconstitutional, Tennessee's three-drug lethal injection protocol, the method by which the State intends to execute Reid. The current Motion asks the Court to stay the January 3, 2008 execution pending resolution

¹ Reid has been sentenced to death in three cases arising out of murders at "Captain D's," "Baskin Robbins," and "McDonalds." This case concerns the murders at "McDonalds."

of the same constitutional issue by the U.S. Supreme Court and the Sixth Circuit Court of Appeals, whose decisions this Court must follow.

Reid has not filed a post-conviction case in Tennessee state court (Tenn. Code Ann. § 40-30-110 *et seq.*) or a habeas corpus case in Federal Court as to the death sentence in this case. (28 U.S.C. § 2254). On November 7, 2007, the Tennessee Supreme Court denied Reid's Motion for a Stay of Execution or to Vacate the Execution Date in State v. Reid, Case No. M2003-00539-SC-DDT-DD, and Plaintiff did not appeal that Order.

On September 19, 2007, another Judge of this Court declared the Tennessee Department of Correction's execution procedures for lethal injection to be unconstitutional and enjoined the State from executing Edward Jerome Harbison under the current procedures for lethal injection. Harbison v. Little, 511 F.Supp.2d 872 (M.D. Tenn. 2007). On October 5, 2007, the State appealed that Order to the Sixth Circuit Court of Appeals. Docket No. 156 (Case No. 07-6225). On October 31, 2007, the Sixth Circuit Court of Appeals ordered that the appeal be held in abeyance pending a U.S. Supreme Court decision in Baze v. Rees, No. 07-5439, cert. granted, 128 S.Ct. 34 (Sept. 25, 2007), which involves a challenge to Kentucky's three-drug lethal injection protocol. Baze is set for argument in the Supreme Court on January 7, 2008.

On September 25, 2007, the Tennessee Supreme Court, in light of the Harbison Order on lethal injection, granted the State's Motion to Vacate Order Setting Execution Date for Mr. Harbison and vacated the September 26, 2007 execution date in State of Tennessee v. Harbison, Case No. M1986-00093-SC-OT-DD.

On December 7, 2007, another Judge of this Court stayed the execution of another Tennessee death-sentenced inmate, Pervis T. Payne, based upon the Harbison decision and the pending case

of Baze v. Rees. See Pervis T. Payne v. Governor Phil Bredesen, Case No. 3:07-0714, Docket Nos. 32 and 33. The State has not appealed that decision.

In the pending Motion for Stay of Execution in this case (Docket No. 20), Plaintiff asks this Court to stay Reid's execution, pursuant to 28 U.S.C. § 1651,² pending the U.S. Supreme Court's decision in Baze v. Rees. The parties agree that the State may not execute Reid by electrocution. Docket Nos. 29 and 33. See Tenn. Code Ann. § 40-23-114.

Defendants initially objected to the standing of Plaintiff Martiniano to bring this action, but that objection has been withdrawn. Docket No. 30. In any event, the Court finds that Plaintiff has standing to bring this case. Martiniano v. Bell, Case No. 3:06-0632, Docket No. 52; Declarations of George Woods, M.D. ("lacks the present capacity to appreciate his position and make a rational choice with respect to continuing or abandoning further litigation") and Ruben Gur, Ph.D. ("floridly psychotic") (Docket No. 38); Harper v. Parker, 177 F.3d 567 (6th Cir. 1999); Kirkpatrick v. Bell, 64 Fed. Appx. 495 (6th Cir. 2003).

Defendants argue that Plaintiff's action is barred by the statute of limitations. In Tennessee, civil actions brought under federal civil rights statutes must be commenced within one year of the time when the cause of action accrued. Tenn. Code Ann. § 28-3-104(a)(3).

The Court agrees with Judge Trauger's analysis of Cooley v. Strickland, 479 F.3d 412 (6th Cir. 2007), and Workman v. Bredesen, 486 F.3d 896 (6th Cir. 2007), adopted by Judge Haynes in Payne, and finds that, under either Cooley test (conclusion of direct review in state court or the time when Plaintiff knew or should have known of the injury), Plaintiff's action herein is timely.

² This court has authority to issue all writs necessary or appropriate in aid of its jurisdiction and agreeable to the usages and principles of law. 28 U.S.C. § 1651.

For the reasons found by Judge Trauger in Harbison (Case No. 3:06-1206, Docket No. 87), the Court finds that facts about the current lethal injection protocol — the protocol being challenged in this case — were not publicly available until at least April 30, 2007, when the new protocol was published. In addition, Plaintiff’s direct appeal in this case was not final until October 15, 2007. Therefore, this action, filed nine days later on October 24, 2007, was filed well within the one-year statute of limitations.

To determine whether to exercise its discretion to issue a stay, the Court must balance the following factors: (1) whether the movant has a strong likelihood of success on the merits; (2) whether the movant would otherwise suffer irreparable injury; (3) whether issuance of a preliminary injunction would cause substantial harm to others; and (4) whether the public interest would be served by issuance of the preliminary injunction. Southwest Williamson County Community Ass’n. v. Slater, 243 F.3d 270, 277 (6th Cir. 2001). The primary justification for the entry of a preliminary injunction is to preserve the trial court’s ability to render a meaningful decision on the merits. Hunt v. United States Securities & Exchange Comm’n, 520 F.Supp. 580, 585 (N.D. Tex. 1981).

The Court finds that, given the pending Harbison and Baze cases and the undisputed irreparable harm in this case, Plaintiff has met the test for issuance of a preliminary injunction or stay of execution by the current lethal injection protocol.

This Court cannot render a meaningful decision on the merits of this action until the U.S. Supreme Court decides Baze v. Rees and the Sixth Circuit Court of Appeals renders its decision in the Harbison case. The Court finds that Plaintiff has shown a likelihood of success on the merits of the claim. Judge Trauger’s decision in Harbison, the Sixth Circuit decision to hold the Harbison appeal in abeyance pending the result in Baze, Judge Haynes’ decision in Payne, and the fact that

the Supreme Court granted certiorari in Baze all weigh in favor of a likelihood of success on the merits of Plaintiff's claim in this case.

In addition, numerous courts across the nation, including the U.S. Supreme Court, have recently stayed pending executions until the decision in Baze (see, e.g., Docket No. 20, pp. 2-3), and counsel for Defendants could not cite a single case wherein a court has denied injunctive relief under these circumstances.

The harm to Plaintiff of not issuing a stay could not be more irreparable. Furthermore, the public has a strong interest in carrying out death sentences in a constitutional manner. Indeed, as pointed out by Plaintiff, Governor Bredesen has indicated that the public interest will be served by maintaining the status quo until the Supreme Court offers guidance on the constitutionality of the lethal injection protocol. See Docket No. 39.

Based on the totality of the circumstances, and weighing all the factors for injunctive relief, the Court finds that the Motion for Stay of Execution has merit and Plaintiff has carried the burden of establishing entitlement to injunctive relief.

Therefore, for all these reasons, Plaintiff's Motion for Stay of Execution (Docket No. 20) is GRANTED, and the January 3, 2008 execution of Paul Dennis Reid is STAYED, pending the Supreme Court's decision in Baze v. Rees, a final decision of the Court of Appeals for the Sixth Circuit in Harbison v. Little, and further Order of this Court.

IT IS SO ORDERED.


TODD J. CAMPBELL
UNITED STATES DISTRICT JUDGE