

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

LINDA MARTINIANO,	)	
Next Friend on behalf of Paul Reid,	)	
	)	
Plaintiff,	)	
	)	No. 3:07-cv-01058
v	)	Death Penalty Case
	)	Campbell/Brown
	)	EXECUTION DATE:
GEORGE LITTLE, in his official capacity	)	JANUARY 3, 2008 at 1:00 a.m.
as Tennessee’s Commissioner of	)	
Corrections; et al.,	)	
	)	

MOTION FOR STAY OF EXECUTION

Under 28 U.S.C. §1651, this Court should grant a stay of Paul Reid’s scheduled execution pending the Supreme Court’s decision in Baze v. Rees, U.S.No. 07-5439, *cert. granted*, 551 U.S. \_\_\_\_ (Sept. 25, 2007) and final disposition of that matter. Indeed, the Supreme Court and lower federal courts have repeatedly granted such stays of execution since the grant of certiorari in *Baze*, which involves a challenge to Kentucky’s three-drug lethal injection protocol. Plaintiff<sup>1</sup> states:

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<sup>1</sup> This Court has already ruled that Linda Martiniano has standing to represent Paul Reid’s interests in this Court. See Martiniano v. Bell, No. 06-00632 (M.D. Tenn.) (Docket Entry No. 54). The Court made this ruling after hearing uncontradicted expert testimony about Mr. Reid’s serious, severe, and debilitating mental illness and structural brain injury. In making its finding that Mr. Reid is incompetent to represent his own interests, the Court also took into consideration the fact that the State Attorney General’s Office had its own expert, Dr. Daniel Martell, conduct a mental evaluation of Mr. Reid wherein Dr. Martell concluded that Mr. Reid is delusional and incompetent. See Exhibit 1, Report of Dr. Daniel Martell. After receiving Dr. Martell’s report, the State Attorney General informed the Court that:

We requested a status conference today, Your Honor, in this matter to advise the Court that the State wishes to withdraw its objection to the standing of the petitioner, Linda Martiniano, to file a petition for writ of habeas corpus as next friend on behalf of Paul Dennis Reid, Junior. We are doing so on the basis of a psychological examination that was conducted by our retained expert on August 16th and 17th, just

1. Judge Trauger has declared Tennessee's three-drug lethal injection protocol unconstitutional. See Harbison v. Little, M.D.Tenn.No. 3:06-cv-1206, 2007 U.S.Dist.Lexis 72410 (M.D.Tenn. Sept. 19, 2007). Judge Haynes has stayed all proceedings in another §1983 case challenging the Tennessee Lethal Injection Protocol. See Payne v. Bredesen, M.D. Tenn. 3:07-cv-0714 (Docket Entry No. 24). Similarly, the Sixth Circuit stayed the *Harbison* appeal pending the Supreme Court's ruling in *Baze*. See Harbison v. Little, No. 07-6225 (6<sup>th</sup> Cir. Oct. 31, 2007)(Order staying proceedings pending outcome of *Baze*)(Attached as Exhibit 2). The Sixth Circuit has since granted Mr. Harbison's motion for stay of execution. (Attached as Exhibit 3). Given that the issues in this case are identical to those in *Harbison*, and *Baze*, this Court should stay proceedings in this matter to await the appellate decisions in *Harbison* and *Baze*. R. 24.

2. Mr. Reid faces a January 3, 2008, execution date. Therefore requires a stay of execution pending the disposition of this action. Absent a stay of execution, Reid will (as held by *Harbison*) be executed in violation of the Constitution before his lethal injection challenge can be adjudicated by this Court, and before the Supreme Court can decide *Baze*.

3. Since granting certiorari in *Baze*, the Supreme Court has granted a stay of execution in every §1983 lethal injection challenge when a stay of execution has been requested. See, e.g., Schwab v. Florida, 552 U.S. \_\_\_\_ (Nov. 15, 2007)( where the petitioner sought a stay of execution

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last week, pursuant to Court-ordered discovery in this matter which resulted in a finding by our expert a conclusion that Mr. Reid is presently incompetent to make a rational decision to waive his capital appeals in accordance with the standards set forth in *Reese versus Payton*. Based on that particular opinion and our continued assessment of additional facts known to us in the matter, we have determined to withdraw our opposition. And **we urge the Court at this time to deem as properly filed the next friend petition by Ms. Martiniano on behalf of Paul Dennis Reid.**

8/24/06 Transcript of proceedings, p. 1 (emphasis added).

pending the disposition of *Baze*, the Court granted his motion.) (Exhibit 4); Berry v. Epps, 552 U.S. \_\_\_\_ (Oct. 30, 2007)(after Fifth Circuit denied relief, granting stay of execution on pending §1983 challenge to Mississippi lethal injection protocol)(Exhibit 5); Emmett v. Johnson, 552 U.S. \_\_\_\_ (Oct. 17, 2007)(following denial of relief by district court on §1983 complaint, granting stay of execution pending disposition of appeal)(Exhibit 6). See also, Turner v. Texas, 551 U.S. \_\_\_\_ (Sept. 27, 2007)(granting stay of execution pending filing and disposition of certiorari petition challenging lethal injection)(Exhibit 7).<sup>2</sup>

4. Similarly, in the wake of *Baze*, the Eleventh and Eighth Circuits have granted stays of execution to allow the lower federal courts to adjudicate pending challenges to the three-drug lethal injection protocol. See Siebert v. Allen, \_\_\_\_ F.3d \_\_\_\_, 2007 WL 3104941 (11<sup>th</sup> Cir. Oct. 25, 2007)(en banc)(granting stay of execution pending *en banc* consideration of lethal injection challenge)(Exhibit 8); Siebert v. Allen, \_\_\_\_ F.3d \_\_\_\_, slip op. at 7 (11<sup>th</sup> Cir. Nov. 5, 2007) (maintaining stay of execution pending final resolution of lethal injection challenge by district court) (Exhibit 9); Jones v. Norris, \_\_\_\_ F.3d \_\_\_\_, No. 07-3165 (8<sup>th</sup> Cir. Oct. 11, 2007)(granting stay of execution pending disposition of §1983 lethal injection challenge in district court), *motion to vacate stay of execution denied* Norris v. Jones, 552 U.S. \_\_\_\_ (Oct. 16, 2007)(Exhibit 10). See also Strickland v. Biros, 549 U.S. \_\_\_\_ (Mar. 20, 2007)(denying motion to vacate district court stay of execution entered in §1983 challenge to Ohio lethal injection procedure)(Exhibit 11).

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<sup>2</sup> The Supreme Court has denied stays only when the petitioner sought review of a state court lethal injection ruling, but an adequate and independent state ground prevented the Supreme Court from reviewing the issue. See Berry v. Mississippi, 552 U.S. \_\_\_\_ (Oct. 29, 2007)(denying stay because “[t]he judgment of the Mississippi Supreme Court relies upon an adequate and independent state ground that deprives the Court of jurisdiction); In Re Michael Richard, 551 U.S. \_\_\_\_ (Sept. 25, 2007)(stay denied where inmate failed to properly lethal injection challenge to state courts, which refused to allow him to file state petition after 5:00 p.m.).

5. In each of these cases, the Supreme Court and lower courts have granted stays of execution where the plaintiff has not yet been granted relief. *A fortiori*, where *Harbison* has already concluded that the instant complaint is meritorious, Plaintiff is entitled to a stay of execution until the complaint can be finally adjudicated by this Court.

6. Taken together, *Harbison*, *Berry*, *Emmett*, *Turner*, *Siebert*, and *Norris* all demonstrate that the stay equities weigh in Plaintiff's favor. A stay of execution is therefore warranted.

#### CONCLUSION

This Court should stay Mr. Reid's execution pending the disposition of *Baze* and pending this Court's final ruling on the complaint.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for Stay of Execution was served via electronic filing upon counsel for the Defendants, Mark Hudson, Assistant Attorney General, Office of the Attorney General, 425 Fifth Avenue North, Nashville, Tennessee 37243 on this the 4th day of December, 2007.

Bradley A. MacLean