

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

RONALD N. JOHNSON,	:	
	:	
Petitioner,	:	
	:	
v.	:	Civil Action No. 02-562-JJF
	:	
THOMAS CARROLL, Warden,	:	
	:	
Respondent.	:	
	:	

Joseph M. Bernstein, Esquire of JOSEPH M. BERNSTEIN, Wilmington,
Delaware.
Attorney for Petitioner.

Thomas E. Brown, Esquire of THE STATE OF DELAWARE DEPARTMENT OF
JUSTICE, Wilmington, Delaware.
Attorney for Respondent.

MEMORANDUM OPINION

September 10, 2003

Wilmington, Delaware

Farnan, District Judge.

Presently before the Court is a Motion For Enlargement Of Stay Pending Appeal (D.I. 22) filed by the Respondent, Thomas Carroll. By Memorandum Opinion and Order dated March 14, 2003, the Court conditionally granted the Writ of Habeas Corpus requested by Petitioner Ronald N. Johnson on his claim that the trial judge improperly failed to recuse himself giving rise to an appearance of bias in violation of Petitioner's due process rights. The Court stayed the issuance of the Writ for a period of 180 days to provide the State an opportunity to resentence Petitioner. The 180 day period concludes on September 10, 2003. Respondent filed a timely notice of appeal, and the appeal is proceeding in the usual course of business in the Court of Appeals for the Third Circuit. Because it is unlikely that Respondent's appeal will be resolved by September 10, Respondent requests the Court to enlarge the stay until such time as a decision is issued on Respondent's appeal.

BACKGROUND

The background related to this action is set forth fully in the Court's Memorandum Opinion dated March 14, 2003. For purposes of the instant Motion, the Court notes that it did not direct any relief in its March 14 Memorandum Opinion and Order toward Petitioner's underlying convictions for possession of a deadly weapon by a person prohibited and simple menacing. In addition, the Court did not address Petitioner's status for

sentencing purposes as a habitual offender pursuant to 11 Del. C. § 4214(a). Rather, the Court's sole conclusion was that the Delaware Supreme Court's decision regarding Petitioner's claim of an appearance of bias on the part of the trial judge was contrary to or involved an unreasonable application of federal law. The Court concluded that the Delaware Supreme Court improperly limited its analysis of Petitioner's claim to the active conduct of the trial judge and did not consider the question of an appearance of bias as required by the Supreme Court's decisions in Liteky v. United States, 510, U.S. 540 (1994) and Lileberg v. Health Services Acquisition Corp., 486 U.S. 847 (1988). As relief, the Court conditionally granted Petitioner the Writ of Habeas Corpus and stayed the issuance of the Writ for 180 days to permit the State to resentence Petitioner.

DISCUSSION

Pursuant to Federal Rule of Appellate Procedure 23, the Court retains jurisdiction to issue orders regarding the custody or release of a petitioner pending the appeal of an order granting or denying habeas relief. See Fed. R. App. P. 23(c), (d); Workman v. Tate, 958 F.2d 164, 167 (6th Cir. 1992). In pertinent part, Rule 23(c) provides:

While a decision ordering the release of a prisoner is under review, the prisoner must--unless the court or judge rendering the decision, or the court of appeals, or the Supreme Court, a or a judge or justice of either court orders otherwise--be released on personal recognizance, with or without surety.

Fed. R. App. P. 23(c). In determining whether to release a habeas petitioner pending appeal, courts apply the following factors outlined in Hilton v. Braunskill, 481 U.S. 770, 776-777 (1987), for evaluating stays of civil judgments:

(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

Courts interpreting Federal Rule of Appellate Procedure 23 have concluded that it creates a presumption in favor of release; however, that presumption may be overcome if the Hilton factors weigh against release. Id.

Applying the Hilton factors in this case, the Court concludes that, on balance, the factors weigh in favor of enlarging the stay pending Respondent's appeal to the Third Circuit. With regard to the likelihood of Respondent's success on appeal, the Court notes that the standard governing habeas corpus proceedings is whether the state supreme court's decision was contrary to or an unreasonable application of clearly established federal law. This standard is quite limited and highly deferential to the state court's decision, and in the Court's view, Respondents have a reasonably strong likelihood of succeeding in their appeal. See Penry v. Johnson, 532 U.S. 782, 793 (2001) ("Even if the federal habeas court concludes that the state court decision applied clearly established federal law

incorrectly, relief is appropriate only if that application is also objectively unreasonable."); Clark v. Murphy, 331 F.3d 1062, 1067 (9th Cir. 2003) (recognizing Supreme Court precedent that habeas review is "highly deferential" and "demands that state court decisions be given the benefit of the doubt") (citations omitted); Lomholt v. Iowa, 327 F.3d 748, 751 (8th Cir. 2003) (recognizing that standard of review of state court decisions under the AEDPA is "limited and deferential"). The Court finds this to be particularly true in this case, where the Court's decision granting habeas corpus relief was based on an analogy to Supreme Court cases related to the issue of recusal under 28 U.S.C. § 455 and not on direct precedent related to the trial judge's appearance of bias under the Due Process Clause.

In addition, the Court finds that the public interest in this case weighs heavily in favor of enlarging the stay. There is a "strong public interest that the sentence of a dangerous felon in accordance with state law not be altered in any way until a federal appellate court passes upon his constitutional challenge." Sailor v. Scully, 666 F. Supp. 50, 53 (S.D.N.Y. 1987). Petitioner is a habitual offender, and his status as such has not been challenged. Likewise, Petitioner's guilt for the underlying conviction of possession of a deadly weapon by a person prohibited has not been challenged. Petitioner has a lengthy criminal history, and he has absconded in the past. In

these circumstances, the Court finds that the public interest weighs sharply in favor of continuing the stay pending appeal.

Further, under the third Hilton factor, the Court cannot say with certainty that Petitioner will be substantially injured by an enlargement of the stay. See Mickens-Thomas v. Vaughn, 2002 LEXIS 8017, *3 (E.D. Pa. May 3, 2002) (finding that the third Hilton factor did not necessarily weigh in favor of Petitioner where there was no guarantee that if parole hearing was held, petitioner would be paroled). If Petitioner is resentenced, it is likely that Petitioner will face a lengthy term of incarceration based upon his habitual offender status.¹ Because it is unlikely that Petitioner will be substantially injured by the enlargement of the stay, the Court finds that this factor weighs in favor of granting the stay.

As for the second factor related to the irreparably injury to the stay applicant, the Court finds that this factor is relatively neutral in its application to this case, with points weighing both in favor of Petitioner and in favor of Respondent. Petitioner contends that the State will not be irreparably

¹ Of course, if Petitioner is not resentenced and he is permitted to be freed, Petitioner will certainly suffer some injury if the Court continues the stay. However, the Court believes that the State will likely resentence Petitioner before permitting him to be released, and in any event, the Court finds that Respondent's likelihood of success on appeal and the public interest militate strongly in favor of maintaining the status quo pending Respondent's appeal.

harm, because the State can resentence Petitioner rather than set him free. If Petitioner is resented and the Third Circuit reinstates his original 18 year sentence, Petitioner maintains that the State can move to have the new sentence vacated and the original sentence imposed. In response, Respondent maintains that if Petitioner is resented, relief on appeal is effectively negated as a practical matter. The Court understands the positions of both parties, and finds that the application of this factor neither weighs in support of nor against the enlargement of the stay.

In sum, the Court is persuaded that enlargement of the stay is warranted in this case. In particular, the first and fourth Hilton factors weigh heavily in favor of enlarging the stay. The third Hilton factor also weighs in favor of enlarging the stay, though not as heavily. The second Hilton factor is relatively neutral, and thus, on balance, the Court is persuaded that Respondent's high likelihood of success on the merits and the public's strong interest in maintaining Petitioner's incarceration pending appeal tip the scale in favor of enlarging the stay. Accordingly, the Court will enlarge the stay in this case until this matter is resolved on appeal.

CONCLUSION

For the reasons discussed, the Court will grant Respondent's Motion For Enlargement Of Stay Pending Appeal.

An appropriate Order will be entered.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

RONALD N. JOHNSON,	:	
	:	
Petitioner,	:	
	:	
v.	:	Civil Action No. 02-562-JJF
	:	
THOMAS CARROLL, Warden,	:	
	:	
Respondent.	:	
	:	

O R D E R

At Wilmington, this 10th day of September 2003, for the reasons set forth in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that:

1. Respondent's Motion For Enlargement Of Stay Pending Appeal (D.I. 22) is GRANTED.
2. The Court's March 14, 2003 Order conditionally granting the Writ of Habeas Corpus is STAYED pending disposition of Respondent's appeal in the United States Court of Appeals for the Third Circuit.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE