

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 12-9000

SHANNON M. JOHNSON

v.

ATTORNEY GENERAL DELAWARE;
PERRY PHELPS, Warden, Delaware Correctional Center,
Appellants

LAKEISHA FORD,
as next friend to Shannon M. Johnson

On Appeal from the U.S. District Court
for the District of Delaware
Appellant's Motion to Vacate Order
(D. Del. No. 12-cv-00469)
District Judge: Honorable Gregory M. Sleet, Chief Judge

PRESENT: HARDIMAN, GREENAWAY, JR., and BARRY, Circuit Judges

ORDER

Presently before the Court is the motion of appellants (collectively, the "State") to vacate an order entered yesterday by the District Court staying the execution of Shannon Johnson, which has been scheduled for Friday, April 20, 2012, at 12:01 a.m. The stay was sought by Johnson's half-sister, Lakeisha Ford, who is represented by the Federal Public Defender and purports to proceed on his behalf as his "next friend." We received Ford's response to the State's motion this morning at 8:00 a.m., and Johnson himself, through his state court-appointed attorney, has joined in the State's motion to vacate the stay of his execution.

The fact that Johnson himself has joined in the State's motion speaks volumes about this case. The Delaware Superior Court sentenced Johnson to death in 2008, and the Delaware Supreme Court affirmed in 2009. See Johnson v. Delaware, 983 A.2d 904 (Del. 2009). From the time of Johnson's penalty phase to this very day, Johnson has consistently indicated his wish to proceed with his state-ordered execution. After the Delaware Supreme Court affirmed his convictions and sentence, he has informed every

court he has been before and every lawyer involved in his proceedings that he wishes to waive all further appellate and post-conviction challenges and proceed to execution. Cognizant of the concerns raised by Johnson's desire, the Delaware Superior Court convened a competency proceeding and appointed independent counsel to advocate for the position that Johnson is not competent to make that decision. The Superior Court conducted a four-day evidentiary hearing in August and September 2011. The Superior Court heard the testimony of six mental health professionals. According to the parties' filings, three of them testified that Johnson is competent and none of them testified to the contrary. The Superior Court also colloquied Johnson at least twice and reviewed numerous letters he had written to lawyers involved in his proceeding and to the court consistently and unequivocally stating his desire to dispense with further legal challenges and proceed to execution. After all of these proceedings, the Superior Court entered an order on February 24, 2012, finding that Johnson is competent to waive his right to further legal proceedings, and it later scheduled Johnson's execution as Johnson had asked it to do.

Just six days before Johnson's scheduled execution, however, Ford filed through the Federal Public Defender motions to appoint herself as Johnson's next friend and to stay his execution so that she could file a habeas petition challenging his execution on the ground that he is mentally retarded and may not be executed under Atkins v. Virginia, 536 U.S. 304 (2002) — a claim which neither Johnson himself nor Ford as his putative next friend ever appears to have raised in state court. The District Court granted Ford's motion and stayed Johnson's execution, for an unspecified period of time, on April 18, 2012. The only rationale that it gave for doing so was that, given its schedule and the volume of the parties' filings, "it has not had the time needed to consider this important matter in the way that it should." (Apr. 18, 2012 Order at 2.) That rationale is insufficient to support a stay of execution, particularly one that the actual parties in interest do not want and instead have actively opposed.

"[F]ederal courts are authorized by the federal habeas statutes to interfere with the course of state proceedings only in specified circumstances. Before granting a stay [of execution], therefore, federal courts must make certain that an adequate basis exists for the exercise of federal power." Demosthenes v. Baal, 495 U.S. 731, 737 (1990) (per curiam). That means that the District Court, before interfering with the State's strong interest in enforcing its criminal judgments (which happens to be Johnson's own expressed interest as well), must conclude, at the very least, that the movant has shown "substantial grounds upon which relief might be granted." Barefoot v. Estelle, 463 U.S. 880, 895 (1983) (superseded on other grounds by statute). The District Court did not do that here. Indeed, the District Court did not identify any potentially meritorious issues raised by Ford's next-friend petition at all.

The failure to articulate any merits-based reason for entering a stay is particularly troubling in light of the extensive background of this case. Ford does not have standing

to proceed on Johnson's behalf unless she shows, among other things, that his consistently expressed desire to dispense with legal challenges and proceed to execution reflects a decision that he is not legally competent to make. See Whitmore v. Arkansas, 495 U.S. 149, 163 (1990). The Delaware Superior Court conducted extensive proceedings and expressly found that Johnson is competent to make that decision. Federal courts generally must defer to such state-court findings by presuming that they are correct. See Demosthenes, 495 U.S. at 735; Taylor v. Horn, 504 F.3d 416, 433 (3d Cir. 2007). We recognize Ford's contention that the usual presumption of correctness does not attach in this case because the state court proceedings were flawed in certain respects. The District Court made no assessment of those arguments before entering a stay, however, and our own review of the available record and the parties' filings thus far gives us no reason to question the Delaware Superior Court's conclusion. Moreover, regardless of whether the Superior Court's finding that Johnson is competent must be presumed to be correct, Ford still bears the burden "clearly to establish" Johnson's incompetence and thus her standing to litigate on his behalf against his wishes. Whitmore, 495 U.S. at 164. The District Court did not address that issue either and, again, nothing we have reviewed so far suggests to us that Ford will be able to meet that burden.

For these reasons, the State's motion to vacate the District Court's order staying Johnson's execution is GRANTED, the stay entered by the District Court on April 18, 2012, is VACATED. The mandate shall issue forthwith.

By the Court,

/s/ Thomas M. Hardiman
Circuit Judge

Date: April 19, 2012

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Marcia M. Waldron

Marcia M. Waldron, Clerk