

No. **13-40171**

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

In re: Rick Thaler, Director, Texas Department of Criminal Justice,
Correctional Institutions Division and Teresa Wooten, sister of crime
victim, Vicki Ann Garner

Petitioners,

-against-

United States District Court for the Eastern District of Texas,

Respondent

Petition for Writ of Mandamus
To the United States District Court, Eastern District of Texas,
Beaumont Division, Civil Docket # 1:03-cv-00239-RAS

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CERTIFICATE OF INTERESTED PERSONS

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The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

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Ladd v. Thaler, Civil Docket # 1:03-cv-00239-RAS
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STATEMENT OF RELIEF SOUGHT

Petitioners, Rick Thaler (the Director), and Teresa Wooten, the sister of crime victim, Vicki Ann Garner, respectfully petition this Court pursuant to Federal Rule of Appellate Procedure 21, the All Writs Act, 28 U.S.C. § 1651, and the Crime Victims' Rights Act (CVRA), 18 U.S.C. § 3771(d)(3), for a Writ of Mandamus directing the United States District Court for the Eastern District of Texas, the Honorable Judge Richard A. Schell, to rule on Robert Ladd's successive § 2254 Petition for Writ of Habeas Corpus that has been pending for over nine years, over seven of which have been since the conclusion of an evidentiary hearing, post-hearing briefing, and proposed findings and conclusions submitted by Ladd and the Director.¹

ISSUES PRESENTED

- I. Whether the district court's failure to rule on Ladd's successive petition alleging mental retardation based claims seven years after the conclusion of the district court evidentiary hearing and briefing by the parties warrants mandamus action by this Court.
- II. Whether a writ of mandamus is warranted in accordance with the Crime Victims Rights Act given the unreasonable delay by the

¹ Pursuant to Rule 21 of this Court's Rules of Appellate Procedure, along with this petition, items supporting this petition and relevant district court documents are filed as a separate set of exhibits, that are cited here as Mandamus Ex. ###.

district court in ruling on Ladd's successive petition alleging *Atkins*² based claims.

STATEMENT OF FACTS AND PROCEEDINGS BELOW

On September 25, 1996, firefighters responded to a fire at an apartment complex in Tyler, Texas. They broke down the locked front and back doors of the apartment unit where the smoke was coming from and discovered the body of Vicki Ann Garner on the floor of her bedroom, face down and naked below the waist. Her wrists had been bound together in front of her. The fire had likely been started on bedding that had been placed between Ms. Garner's legs. Ms. Garner was thirty-eight years old at the time of her death. *Ladd v. Cockrell*, 311 F.3d 349, 350-51 (5th Cir. 2002); *Ladd v. State*, 3 S.W.3d 547, 556 (Tex. Crim. App. 1999).

In August 1997, Robert Charles Ladd (Ladd) was properly convicted and sentenced to die in Texas state court for the brutal murder of Ms. Garner. "Ladd had previously worked at, and been a client of a rehabilitation center where [Ms.] Garner was employed." *Ladd v. Cockrell*, 311 F.3d at 350-51. After unsuccessfully challenging the constitutionality of his capital murder conviction and sentence of death in

² *Atkins v. Virginia*, 536 U.S. 304 (2002).

both state and federal courts, Ladd's execution was scheduled for April 23, 2003.

On the day of Ladd's scheduled execution, this Court stayed his execution and authorized Ladd to file a successive federal habeas petition in the district court raising claims premised on *Atkins v. Virginia*, 536 U.S. 304. *In re Ladd*, No. 03-40534 (2003) (unpublished opinion); Mandamus Ex. 1; Docket Entry (DE)³ 1. On June 20, 2003, Ladd filed his successive petition for writ of habeas corpus and brief in support in the district court. Mandamus Exs. 3, 4; DE 8,9. On August 20, 2003, the Director filed a motion to dismiss the petition. Mandamus Ex. 5; DE 15. Subsequently, Ladd filed a motion to hold his case in abeyance on September 8, 2003, to which the Director filed a response in opposition on September 12, 2003. Mandamus Exs. 6, 7; DE 16, 18. Over a year later, on October 27, 2004, the Director filed a supplemental response in opposition asking the district court to dismiss Ladd's motion to abate as moot and also asking the district court to rule on the Director's motion to dismiss. Mandamus Ex. 8; DE 19. Thereafter, on January 18, 2005,

³ The full docket sheet of Ladd's successive petition pending in the court below is Mandamus Ex. 2.

the district court denied both Ladd's motion to abate and the Director's motion to dismiss, and ordered an evidentiary hearing. Mandamus Ex. 9; DE 20.

An evidentiary hearing was held June 27-28, 2005, and a supplemental deposition was conducted in July 2005. Ladd filed his post-hearing brief and proposed findings of fact and conclusions of law on July 29, 2005. Mandamus Exs. 10, 11; DE 76, 77. The Director's post-hearing brief and proposed findings of fact and conclusions of law were filed on August 5, 2005. Mandamus Exs. 12, 13 ; DE 80, 81. Ladd filed a response to the Director's post-hearing brief on August 8, 2005. Mandamus Ex. 14; DE 82.

Thus, Ladd's successive petition has been pending in the district court since June 2003, over nine years. The evidentiary hearing, proposed findings and conclusions, and briefing by the parties were completed over seven years ago. The arguments of the parties are before the court and the facts relevant to Ladd's successive petition have been thoroughly developed. There is nothing remaining but for the lower court to rule.

On June 4, 2012, the Director respectfully requested that the district court rule on Ladd's successive petition and enter judgment denying relief.

Mandamus Ex. 15; DE 89. In his motion, the Director asserted that the length of time Ladd's petition had been pending was unreasonable, and further noted Teresa Wooten's rights under the CVRA. To date, no further action has been taken. Ladd's successive petition remains pending in the district court.

REASONS THE WRIT SHOULD ISSUE

I. The District Court's Failure to Rule on Ladd's Successive Petition Alleging Mental Retardation Based Claims Seven Years after the Conclusion of the Evidentiary Hearing and Briefing by the Parties Warrants Mandamus Action by this Court.

This Court has jurisdiction to issue the writ of mandamus pursuant to 28 U.S.C. § 1651, the All Writs Statute. A writ of mandamus is an extraordinary remedy that is "appropriate only when the trial court has exceeded its jurisdiction or has declined to exercise it, or when the trial court has so clearly and indisputably abused its discretion as to compel prompt intervention by the appellate courts." *In re Hood*, 135 Fed. Appx. 709 (5th Cir. 2005) (unpublished) (quoting *In re United States*, 397 F.3d 274, 282 (5th Cir. 2005)). As reiterated by this Court:

Specifically, a court must find three requirements before a writ will issue: (1) "the party seeking issuance of the writ [must] have no other adequate means to attain the relief he desires;" (2) "the petitioner must satisfy the burden of showing that

[his] right to issuance of the writ is clear and indisputable;” and (3) “even if the first two prerequisites have been met, the issuing court, in the exercise of its discretion, must be satisfied that the writ is appropriate under the circumstances.”

In re United States, 397 F.3d at 282; *see also In re Volkswagen of America, Inc.*, 545 F.3d 304, 311 (5th Cir. 2008) (en banc) (*quoting Cheney v. U.S. Dist. Ct.*, 542 U.S. 367, 380-81 (2004)). The Director and Wooten satisfy all these criteria.

1. No other adequate means of relief exists.

On June 4, 2012, the Director filed a motion in the lower court requesting that it rule on Ladd's successive petition for habeas corpus and deny relief. In that motion, the Director complained of the protracted procedural history of the case and the unreasonable length of delay since the evidentiary hearing and conclusion of all briefing. The Director asserted the interest of the State in the finality of its convictions as well as the State's right to prompt resolution of a habeas petitioner's claims. Eight months later, no action has been taken, and the court remains silent. The Director has no other adequate means of relief to end the delay in this case.

2. The State has a clear and indisputable right to a prompt resolution of federal habeas cases attacking state court judgments.

The state's interest in the finality of its convictions is clear and indisputable. *See In re Blodgett*, 502 U.S. 236, 239 (1992)(recognizing State's "sovereign power to enforce the criminal law, an interest [the Supreme Court] found of great weight in *McClesky* [*v. Zant*, 499 U.S. 467, 491-94 (1991)], when discussing the importance of finality in the context of federal habeas proceedings"). In enacting AEDPA, "[C]ongress wished to curb delays, to prevent 'retrials' on federal habeas, and to give effect to state convictions to the extent possible under law." (*Terry*) *Williams v. Taylor*, 529 U.S. 362, 386 (2000) (opinion of Stevens, J.); *see also id.* at 404 (majority opinion); (*Michael*) *Williams v. Taylor*, 529 U.S. 420, 436 (2000) (purpose of AEDPA is to further principles of comity, finality, and federalism); *In re Parker*, 49 F.3d 204, 208 (6th Cir. 1995) (noting priority given to death penalty habeas cases due, in part, to interests of state in finality of convictions and sentences); *Neal v. Gramley*, 99 F.3d 841, 846 (7th Cir. 1996) (noting that the "spirit and letter" of AEDPA demands prompt resolution of federal habeas claims brought by state prisoners).

Ladd received a stay of execution from this Court over nine years

ago for the purpose of raising a successive writ alleging that he is mentally retarded and his execution would violate *Atkins*. Despite having concluded a two-day hearing, post-hearing briefing, and proposed findings by the parties over seven years ago, no action has been taken by the district court, and this Court's stay remains in effect.

Concerning stays of execution imposed on a state court by a federal court, the Supreme Court has held:

In a capital case the grant of a stay of execution directed to a State by a federal court imposes on that court the concomitant duty to take all steps necessary to ensure *a prompt resolution of the matter*, consistent with its duty to give full and fair consideration to all of the issues presented in the case.

In re Blodgett, 502 U.S. at 240 (emphasis added). In *Blodgett*, the Court also recognized that the State of Washington had “sustained severe prejudice by the 2 ½-year stay of execution.” *Id.* at 239.

Recently, the Supreme Court elucidated what precisely constitutes proper stay and abeyance in an AEDPA case. Although district courts may issue stays within their sound discretion, the ADEPA “does circumscribe that discretion.” *Rhines v. Weber*, 544 U.S. 269, 276 (2005). Specifically, stay and abeyance must respect that statute's purpose to

reduce delays in the execution of criminal sentences. *Id.*; *see also Williams v. Thaler*, 602 F.3d 291, 309 (5th 2010); *Evans v. Cain*, 577 F.3d 620, 623 (5th Cir. 2009).

Here, the district court's inaction for over seven years on Ladd's successive writ concerning *Atkins* based claims has effectively rendered this Court's stay indefinite, thus frustrating AEDPA's objective of encouraging finality of federal habeas proceedings. *See, e.g., Ryan v. Gonzales*, 2013 WL 68690 *10-11 (holding indefinite stays involving incompetency claims are inappropriate in federal habeas proceedings, stating "[a]t some point the State must be allowed to defend its judgment of conviction"). Indeed, the district court's failure to rule on Ladd's successive petition has prevented the State from enforcing the death penalty against Ladd, or conversely prohibited any ordinary appellate review of a determination by the district court that is adverse to the State. *Cf. In re United States*, 397 F.3d at 283, 286, 287.

While it is generally accepted that matters of docket control are a matter of court discretion, the court's duty to diligently manage its docket cannot be ignored. *In re Young*, 447 F. Appx 326 (3d Cir. 2011) ("[M]andamus may be warranted when a district court's delay equates to

a failure to exercise jurisdiction.”); *Will v. Calvert Fire Ins. Co.*, 437 U.S. 655, 661-62 (1978) (“There can be no doubt that, where a district court persistently and without reason refuses to adjudicate a case properly before it, the court of appeals may issue the writ [of mandamus] ‘in order that [it] may exercise the jurisdiction of review given by law.’”). Here, there is no apparent reason for a failure to adjudicate this case. Despite the Director’s motion requesting that the court take action, filed eight months ago, no action has been taken and the court remains silent. This case involves the adjudication of claims premised on *Atkins*, wherein the law is well-settled. The evidentiary hearing lasted only two days and consisted of eight witnesses. The post-hearing briefing and proposed findings filed by the parties, while thorough, are certainly not unusually voluminous. The transcript of the evidentiary hearing and accompanying exhibits are not out of the ordinary for most hearings involving mental retardation claims. At this point, the length of delay in rendering judgment can be nothing other than unreasonable.

3. Mandamus is appropriate under the circumstances.

As aptly remarked by the Fourth Circuit:

The Respondents have a right to a prompt decision of the

petitioner's claim on the merits. The public also has a vital interest in the fair and prompt conclusion of habeas petitions in the federal courts, particularly when they involve a serious crime prosecuted by one of the states. The district court has a duty to decide cases within its jurisdiction. This has been referred to as "the virtually unflagging obligation of the federal courts to exercise the jurisdiction given them." While this "unflagging obligation" was made with reference to abstention, the principle applies with even more force to a habeas corpus case that has been pending for more than five years.

Spann v. Martin, 963 F.2d 663, 673 (4th Cir. 1992) (quoting *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976)). In the instant case, the district court's actions threaten the delicate state-federal relations. In *Maryland v. Soper*, 270 U.S. 9, 29 (1926), the Supreme Court stated that a "more liberal use of mandamus" was appropriate when a federal district judge removed a murder indictment from the State of Maryland. Noting that the writ of mandamus is analogous to an equitable remedy, the Court recognized in that case that "the jurisdiction of the courts of a state to try offenses against its own laws and in violation of its own peace and dignity [was] wrested from it by the order of an inferior federal court." *Id.* at 29. (cited in *Will v. United States*, 389 U.S. 90, 95 (1967) and *Cheney v. United States Dist. Court for the Dist. of Columbia*, 542 at 381 (2004)).

Similarly in the instant case, the State of Texas has been proscribed quite indefinitely from punishing the murderer of an innocent young woman in her home because despite all evidence and briefing having been concluded for over seven years, the district court has neglected to decide the claims of mental retardation before it, instead leaving the successive petition to languish for so long that the lower court's inaction essentially amounts to a failure to exercise its jurisdiction and renders this Court's stay indefinite. *Madden v. Myers*, 102 F.3d 74,79 (3rd Cir. 1996) (noting that appellate courts may issue a writ of mandamus on the ground that undue delay is tantamount to a failure to exercise jurisdiction) *superceded by rule in part on other grounds*, *In re Ordaz*, 2013 WL 42701 (3rd Cir. 2012) (unpublished); *see also In re Hood*, 135 Fed. Appx. at 711.

II. A Writ of Mandamus Is Warranted in Accordance with the CVRA Given the Unreasonable Delay by the District Court in Ruling on Ladd's Successive Petition Alleging *Atkins* Based Claims.

As the sister of the victim in this case, Ms. Teresa Wooten, and the rest of Vicki Ann Garner's family are clearly entitled to the rights granted to crime victims by the CVRA, 18 U.S.C. § 3771. *See* 18 U.S.C. § 3771(b)(2)(D); *see also Pann v. Warren*, No. 5:08-cv-13806, 2010 WL 2836879, at *4 (E.D. Mich. July 19, 2010) (finding that the victim's family

members “are ‘crime victims’ under the CVRA who are entitled to the rights provided to crime victims under the CVRA’s habeas provisions”).

Under the CVRA, crime victims are granted, among other rights, both the right to “proceedings free from unreasonable delay” and the right “to be treated with fairness and with respect for the victim’s dignity and privacy.” 18 U.S.C. § 3771(a)(7), (8). The plain language of the statute extends these rights to habeas corpus proceedings such as the one initiated by Ladd in the court below. *See id. at* § 3771(b)(2)(A) (“In a Federal habeas proceeding arising out of a State conviction, the court shall ensure that a crime victim is afforded the rights described in paragraphs [] (7) and (8) of subsection (a)”). Either the victim or the attorney for the Government may assert these rights directly to the district court, who “shall take up and decide any motion asserting a victim’s right *forthwith*.”) (emphasis added); § 3771(d)(1) (“The crime victim or the crime victim’s lawful representative, and the attorney for the Government may assert the rights described in subsection (a).”); § 3771(d)(3).

On June 4, 2012, the Director filed a motion in the lower court requesting that it rule on Ladd’s successive petition for habeas corpus and

deny relief on his claim of mental retardation. In that motion, the Director complained of the protracted procedural history of the case and the unreasonable length of delay since the evidentiary hearing and conclusion of all briefing, asserted the State's right to prompt resolution of habeas petitioners' claims, and called the Court's attention to the rights of victims and their families, specifically the rights of Vicki Ann Garner's family, under the CVRA. Mandamus Ex. 15; DE 89. The Director also attached as Exhibit A to his motion, a letter from Teresa Wooten, requesting assistance in asserting her rights under the CVRA. Yet as her letter poignantly explains, her and her family's rights have been consistently ignored in this case. Mandamus Ex. 16.

Ms. Wooten describes the emotional toll that the delay in resolution of this case has taken on her and her family. With moving clarity she explains how her sister's murder left her "family circle [] so horribly broken, [their] lives so horribly shattered." "[E]very birthday, every holiday, every special occasion is marred by the fact that [Vicki] is not here to celebrate with us." Ms. Wooten describes waiting patiently throughout the past fifteen years for each appeals court to make its decision and waiting for the past six years for the district court to make a determination that will allow "our family to move on in the healing

process.” During this time, her father, while still in relatively good health, has begun to suffer heart-related health issues and her mother, slowly, over the past three years, succumbed to Alzheimer’s disease. She expresses understanding and appreciation for the seriousness and grave concern the district court must have in considering this case, and yet she struggles, understandably, to comprehend why it should take over six years for the lower court to make a decision. And finally, she laments that her mother did not live, and possibly her father will also not live “to see justice served for Vicki.” Another year has passed since Ms. Wooten wrote her letter, and there is no indication that her sister’s case is any nearer to closure.

The extreme hardship brought upon crime victims and their families due to an unreasonable delay in proceedings was discussed at length during the floor debate of the CVRA bill. Senator Dianne Feinstein, a co-sponsor of the bill, noted that “[t]he result of such delays is that victims cannot begin to put the crime behind them and they continue to be victimized. It is not right to hold crime victims under the stress and pressure of future court proceedings merely because it is convenient for the parties or the court.” Senate Debate at S4269 (Statement of Sen. Feinstein). Co-sponsor Senator Jon Kyl concurred, stating that “whatever peace of mind a victim might achieve after a crime is too often inexcusably postponed by unreasonable delays in the criminal case.” *Id.* But that is

exactly what has happened in this case.

This Court has recognized the right of traditional mandamus review for crime victims and their families under the CVRA. *In re Amy Unknown*, 701 F.3d 749, 756-59 (5th Cir. 2012) (en banc); *In re Dean*, 527 F.3d. 391, 394 (5th Cir. 2008); *see also* 18 U.S.C. § 3771 (d)(3). Teresa Wooten and the rest of Vicki Ann Garner's family have been waiting for justice for Vicki since she was brutally murdered over sixteen years ago. Nine of those years have been spent waiting for the district court to rule on Ladd's successive petition for habeas corpus alleging that he is mentally retarded and the last seven of those years have been after the conclusion of an evidentiary hearing and briefing by the parties on the matter. To ask them to continue to bear any more delay not only violates their right to a proceeding free from unreasonable delay, but also tramples on their right to be treated with fairness, dignity, and respect. *Cf. Carter v. Bigelow*, 869 F. Supp. 2d 1322, 1327 (D. Utah 2011) (striking petitioner's motion to amend habeas petition stating that it is the court's responsibility to balance petitioner's due process rights, crime victims' rights under CVRA to proceedings free from unreasonable delay, and respondent's interest in the finality of petitioner's state court conviction). As such, this Court should issue a writ of mandamus ordering the district court to rule on Ladd's successive petition within 30 days. *Cf. In re Olesen*, 447 Fed. Appx. 868, 871 (10th Cir. 2011) (unpublished) (denying

writ of mandamus where there are positive indications that the case is proceeding and a briefing schedule has been set, but recognizing CVRA rights and indicating that in absence of orderly progression of case, proper remedy would be to set a deadline for a ruling).

CONCLUSION

For all of the foregoing reasons the Director and Ms. Wooten respectfully request that this Court issue a writ of mandamus ordering the district court to rule on Ladd's successive petition within 30 days.

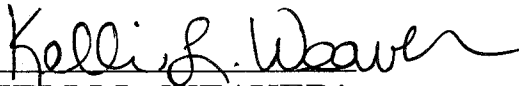
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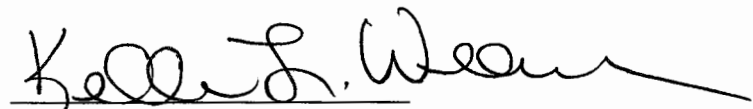
CERTIFICATE OF SERVICE

I certify that on the 12th day of February, 2013, a copy of the above pleading was provided to the district court, The Honorable Judge Richard A. Schell, by overnight mail. I further certify that a copy of the above pleading was also provided to the following counsel for Robert Charles Ladd by overnight delivery.

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