

Clarence E. HILL, Plaintiff-Appellant,  
v.  
James McDONOUGH, Charlie Crist, Defendants-Appellees.

No. 06-10621.

United States Court of Appeals, Eleventh Circuit.

August 29, 2006.

D. Todd Doss, D. Todd Doss, P.A., Lake City, FL, for Hill.

Before EDMONDSON, Chief Judge, and TJOFLAT and PRYOR, Circuit Judges.

**ON REMAND FROM THE UNITED STATES SUPREME COURT**

PER CURIAM:

Clarence E. Hill is a Florida death row inmate. On January 20, 2006, Hill brought this suit under 42 U.S.C. § 1983 to enjoin the State of Florida from carrying out his execution by lethal injection on January 24, 2006. He alleged that the State's execution procedure constituted cruel and unusual punishment under the Eighth and Fourteenth Amendments because the first drug to be injected, sodium pentothal, would not suffice as an anesthetic to render painless the administration of the second and third drugs that would cause his death. That is, he could remain conscious and suffer severe pain as the second drug paralyzed his lungs and the third drug caused cramping and a fatal heart attack.

The district court, relying on our decision in *Robinson v. Crosby*, 358 F.3d 1281 (11th Cir.2004), concluded that Hill's § 1983 claim was the functional equivalent of a successive petition for a writ of habeas corpus, which this court had not authorized him to file, see 28 U.S.C. § 2244(b)(3)(A), and therefore dismissed the claim for lack of jurisdiction. We affirmed. *Hill v. Crosby*, 437 F.3d 1084, 1085 (11th Cir. 2006).

Hill petitioned the Supreme Court for a writ of certiorari. The Court granted the writ and stayed his execution pending its resolution of the case. *Hill v. Crosby*, 546 U.S. \_\_\_, 126 S.Ct. 1189, 1190, 163 L.Ed.2d 1144 (2006) (mem). Following oral argument, the Court held that Hill's § 1983 claim could proceed, vacated our judgment, and remanded the case for further proceedings. *Hill v. McDonough*, 547 U.S. \_\_\_, 126 S.Ct. 2096, 2102-04, 165 L.Ed.2d 44 (2006). Since, as the Supreme Court observed, "[t]he equities and the merits of Hill's underlying action" have not been determined, *id.* at 2104, and because the district court is the appropriate forum for such

1314 determination, we vacate that \*1314 court's decision and remand the case for further proceedings.

SO ORDERED.

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