

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

FILED
U.S. DISTRICT COURT
DISTRICT OF MARYLAND
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CLERK OF COURT
BY _____

STEVEN H. OKEN, # 212-612

*

Plaintiff,

*

v.

*

Civil Action No: PJM-04-1830

FRANK C. SIZER, JR., *et al.*

*

Defendants.

*

* * * * *

**DEFENDANTS' OPPOSITION TO REQUEST FOR
STAY OF EXECUTION, AND MOTION TO DISMISS OR,
IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT**

Defendants, Frank Sizer, Jr., Commissioner of the Maryland Division of Correction (DOC), William Williams, Warden of the Maryland Correctional Adjustment Center (MCAC), Gary Hornbaker, Warden of the Metropolitan Transition Center (MTC), by their attorneys, J. Joseph Curran, Jr., Attorney General of Maryland, and David P. Kennedy, Ann N. Bosse, and Scott S. Oakley, Assistant Attorneys General, hereby oppose the plaintiff's request for a stay of execution and move, pursuant to Fed.R.Civ.P. 12(b), to dismiss the complaint filed herein or, in the alternative, pursuant to Fed.R.Civ.P. 56, for summary judgment. The grounds of this Opposition and Motion are:

1. The complaint fails to state a claim under 42 U.S.C. § 1983 upon which the relief prayed can be granted;

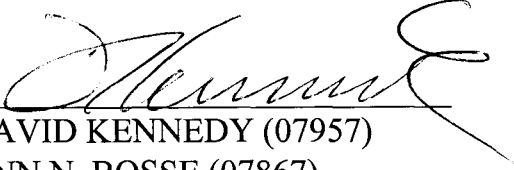
2. This Court lacks jurisdiction over the claim if construed as a claim under 28 U.S.C. § 2254;

3. The Plaintiff is not entitled to any equitable relief in the form of a stay of execution;
4. The claim is barred by *res judicata*; and,
5. There is no genuine dispute as to any material fact and Defendants are entitled to judgment in their favor as a matter of law.

WHEREFORE, the Defendants pray that this Court deny a stay of execution and dismiss the complaint against them or, in the alternative, award them summary judgment in this case. In support of this Motion, Defendants submit the accompanying Memorandum of Law and Exhibits.

Respectfully submitted,

J. JOSEPH CURRAN, JR.
Attorney General of Maryland



DAVID KENNEDY (07957)
ANN N. BOSSE (07867)
SCOTT S. OAKLEY (06308)
Assistant Attorneys General

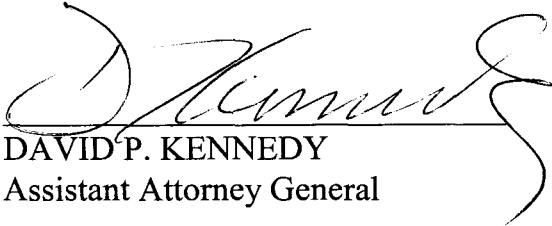
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Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of June, 2004, a copy of the foregoing Opposition to Request for Stay of Execution and Motion to Dismiss or, in the Alternative, Motion for Summary Judgment and Memorandum in Support thereof, was transmitted to Mr. Bennett by email at fred7000@aol.com and to Michael E. Lawlor by email at lawlor@bennettlawlor.com, and will be hand-delivered on June 14, 2004, to:

Fred Warren Bennett
Bennett & Lawlor, LLP
6301 Ivy Lane Suite 419
Greenbelt, MD
20770-6345



DAVID P. KENNEDY
Assistant Attorney General

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