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General Docket
Eighth Circuit Court of Appeals

Court of Appeals Docket #: 05-3353

Filed: 08/29/2005

Nsuit: 3550 Prisoner - Civil Rights

Termed: 08/30/2005

Timothy Johnston v. Donald Roper, et al

Appeal From: U.S. District Court for the Eastern District of Missouri - St. Louis

Case Type Information:

- 1) Prisoner
- 2) State
- 3) Civil Rights

Originating Court Information:

District: 0865-4 : 4:04-cv-1075 DJS

Trial Judge: Charles A. Shaw, U.S. District Judge

Date Filed: 08/16/2004


Date Order/Judgment:

08/26/2005

Date NOA Filed:

08/29/2005

- 08/30/2005 RESPONSE of aplee, Donald P. Roper, in opposition to appellant motion for Stay of Execution filed by Timothy Johnston [1945554-1] [1945928] .
- 08/30/2005 REPLY filed by Timothy Johnston [05-3353]
- 08/30/2005 JUDGMENT: Kermit E. Bye, Gerald W. Heaney, Pasco M. Bowman. Johnston's motion for Stay of Execution scheduled for Wednesday, August 31, at 12:01 a.m., is granted until Thursday, September 8, 2005, at 12:01 a.m. [1945554-1] [05-3353] [1946301]
:GRANTED. Bowman, Circuit Judge, dissenting. This is a 42 U.S.C. Section 1983 case raising an Eighth Amendment challenge to the lethal injection protocol used by the State of Missouri in executing prisoners in capital cases. The district court concluded that in seeking a stay of execution pending the court's decision on the merits of the case, Johnston had shown neither a threat of irreparable harm (i.e., wantonly inflicted pain) nor the probability of his success on the merits (citing *Dataphas Systems, Inc. v. C.L. Systems, Inc.*, 640 F.2d 109, 113 (8th Cir. 1981)). The district court denied the stay and granted summary judgment to the State on the merits of Johnston's constitutional claim. As I see no clear error in the court's factual findings, nor errors in its conclusions of law, I would deny Johnston's emergency motion for stay of execution. Johnston still has not shown either a threat of irreparable harm nor the probability of success on the merits. To the contrary, the record in this probability of success on the merits. To the contrary, the record in this case establishes that the protocol has been carefully designed to avoid the infliction of pain and that any chance the carrying out of the protocol will in fact cause Johnston any pain at all is virtually nil. There thus is no reason to postpone the scheduled execution date. [05-3353] [1946301]

- 08/30/2005 PETITION for REHEARING with petition for rehearing en banc. Filed by Appellees Donald P. Roper, w/service ., TO COURT [05-3353]
- 08/30/2005 JUDGE ORDER: granting appellees' petition for rehearing with petition for rehearing en banc, and the stay of execution granted by the panel is vacated. Chief Judge Loken, Judge Bye, and Judge Melloy would deny the petition for rehearing and in place the panel's stay of execution. Judge Colloton and Judge Benton took no part in this vote. . [1946321-1] [05-3353] [1946322]
- 08/30/2005 AMENDED ORDER filed amending the order granting the petition for rehearing en banc to read that only Judge Benton took no part in the vote. [05-3353] [1946325]
- 08/30/2005 U.S. Supreme Court order DENYING motion for stay of execution. [05-3353] [1946327] . Order filed in the Supreme Court on 8/30/05 Sup. Ct. No. 545 [05-3353]
- 08/31/2005 Prisoner Executed 12:07 a.m. [05-3353]
- 08/31/2005 RECORDS received: Original File, consisting of 4 Volumes ECF file - vols. 1, 2, 3, and 4. Location STL. [05-3353]
- 09/01/2005  JUDGE ORDER: to amend previous order of 8/30/05 . [05-3353] [1947267], - Published Order. Judge Heaney's dissent is appended - "I cannot vote to send Timothy Johnston to his death tonight without first having an opportunity to review the entire district court record relating to his claim that Missouri's execution protocol subjects him to cruel and unusual punishment. I voted to stay Johnston's execution for the modest period of roughly one week to provide myself and the other judges an opportunity to review the entire record, rather than the incomplete record we have so far received. The state opposed Johnston's motion to stay his execution and has now attempted to convince a majority of our en banc court that its interest in a swift execution is more important than allowing this court to review the entire record so as to make an informed decision about whether Johnston's Eight Amendment claim has any merit. I reserve the right to set forth my views more fully at a later time.

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