

Nos. 04-3044/3066

FILED
JAMES BONINI
CLERK
FILED

FEB 02 2004

2004 FEB-3 P 4:31
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
EAST DIV. COLUMBUS

LEONARD GREEN, Clerk

JOHN GLENN ROE,

Plaintiff-Appellant,

v.

ORDER

ROBERT TAFT, Governor, et al.,

Defendants-Appellees;

C2-03-1277
Judge Graham

Before: SUHRHEINRICH, SILER, and CLAY, Circuit Judges.

On January 30, 2004, a majority of the non-recused judges in active service voted *sua sponte* to reconsider and rescind the order of January 13, 2004, granting hearing *en banc* in Case No. 04-3044, and ordered that "all pending motions and filings are referred in the first instance to the assigned panel, for such action as it finds appropriate."

Thus, presently before this panel are the following motions:

- (1) Appellant Roe's Motion to Conform the En Banc Court to the requirements of 28 U.S.C. § 46(c);
- (2) Appellant Roe's Motion to Set Aside Judgment and Renewed Motion for Stay of Execution;
- (3) Appellant Roe's Motion to Expedite Appeal;
- (4) Appellees' Motion to Dismiss the Case for Lack of Jurisdiction; and
- (5) Appellees' Renewed Motion to Dismiss Appeal for Lack of Appellate Jurisdiction.

The majority of the panel having previously concluded that Judge Graham properly transferred the § 1983 case to this Court as a request to file a second petition, and having concluded

A TRUE COPY

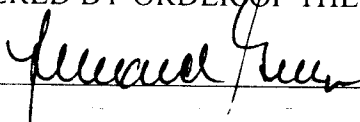
Attest:
LEONARD GREEN, Clerk

By [Signature]
Deputy Clerk

that Roe failed to meet the requirements for filing a second or successive petition under 28 U.S.C. § 2244(b)(2), and having no sound reason to revisit those rulings, we **HEREBY DENY** Appellant Roe's Renewed Motion to Set Aside Judgment and **FURTHER DENY** Roe's Renewed Motion for Stay of Execution. Appellant Roe's Motion to Expedite Appeal is **GRANTED**. Given the En Banc Court's January 30, 2004 order reconsidering and rescinding the order of January 13, 2004, Appellant Roe's Motion to Conform the En Banc Court to the Requirements of 28 U.S.C. § 46(c) is **MOOT**. Appellees' Motion and Renewed Motion to Dismiss the Appeal are **GRANTED**.

CLAY, Circuit Judge, dissenting in part. I dissent from the panel's denial of the motion to stay the execution and the grant of the motion to dismiss the appeal. My reasons for dissenting are set forth in my dissent to the panel's prior order of January 13, 2004, in Case No. 04-3044, and in my dissent to the *en banc* Court's order of January 30, 2004, in Case Nos. 04-3044/3066.

ENTERED BY ORDER OF THE COURT

A handwritten signature in cursive script, appearing to read "Leonard Green", is written over a horizontal line.

Leonard Green, Clerk