

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

***** UNCONSTITUTIONAL EXECUTION IMMINENT *****

MARCEL WILLIAMS,

Plaintiff

v.

No. 5:17-cv-00103-KGB (MW)

ASA HUTCHINSON, Governor of the State of Arkansas, and
WENDY KELLEY, Director, Arkansas Department of Correction,

Defendants

PLAINTIFF MARCEL WILLIAMS'S EMERGENCY MOTION TO STAY
UNCONSTITUTIONAL EXECUTION

Plaintiff Marcel Williams, through counsel, moves this Court to issue an immediate stay of execution and to order Defendants, their agents, and their designees to immediately cease all efforts to execute Plaintiff and to immediately provide medical care to him. In support, counsel avers:

1. The State of Arkansas executed Jack Jones at approximately 7:20 p.m. Mr. Jones and Mr. Williams share similar medical conditions including diabetes and neuropathy. Mr. Jones agreed to the placement of a central line that was inserted by the infirmary hours before his execution. The infirmary staff tried unsuccessfully to place a central line in Mr. Jones's neck for 45 minutes before placing one elsewhere on his body. Eye witness reports of the execution of Mr. Jones state that after the midazolam was administered at 7:06 p.m. The ADC did not wait 5 minutes to perform the consciousness check. During continual "consciousness checks," and after 5 minutes had elapsed,

around 7:11 or 7:12 p.m. Mr. Jones was moving his lips and gulping for air. Mr. Jones's movements after the midazolam was administered is evidence of continued consciousness.

2. The State of Arkansas is set to begin its execution of Mr. Williams at approximately 8:15 p.m. Mr. Williams did not agree to the insertion of a central line. Thus his execution is likely to be even more torturous than the Jones execution.

3. Because Mr. Jones's execution appeared to be torturous and inhumane, Mr. Williams moves for an immediate stay of his execution pending further review of the Jones execution in this Court.

4. While the claims raised in the prior Complaints necessarily relied on evidence and arguments *anticipating* the unconstitutionality of the State's execution protocol, the current circumstances demonstrate an ongoing constitutional violation—cruel, unusual, and inhumane infliction of pain and suffering upon Mr. Williams that is imminent based on the Jones execution. This imminent constitutional violation is not cabined by *Glossip's* "risk" threshold. *See Glossip v. Gross*, 135 S. Ct. 2726, 2737 (2015) (to obtain pre-execution relief, death row prisoners must show "substantial risk of serious harm" or "objectively intolerable risk of harm") (internal quotations omitted). Accordingly, relief for the instant Eighth Amendment violation is not precluded by the Eighth Circuit decision in *McGehee v. Hutchinson*, No. 17-1804, 2017 WL 1404693 (8th Cir. Apr. 17,

2017), *cert. denied* (Apr. 21, 2017) or by its decisions today in the as-applied challenges in *Williams v. Kelley*, No. 17-1848, and *Jones v. Kelley*, No. 17-1849.

5. Moreover, before this evening, Defendants could claim with a straight face that they were “subjectively blameless for purposes of the Eighth Amendment,” *Glossip*, 135 S. Ct. at 2737, for the needless pain and suffering that Plaintiffs may experience during their executions. Defendants can no longer plead innocence. To the contrary, State officials at this moment are knowingly inflicting gratuitous pain and suffering upon Mr. Williams, and thereby violating the core protection of the Eighth Amendment. *See Baze v. Rees*, 536 U.S. 35, 102 (2008) (“The evil the Eighth Amendment targets is intentional infliction of gratuitous pain”).

6. The State has acknowledged in this case that “the [Supreme] Court has carefully and deliberately cabined the limited circumstances in which *risk of pain, as opposed to intentional infliction of pain*, can support an Eighth Amendment claim.” Appellants’ Reply Br., 8th Cir. Case No. 17-1804, at 11 (Apr. 17, 2017) (emphasis added). In light of the current circumstances and continuing actions of State officials, it is apparent that the State will knowingly and recklessly inflict gratuitous pain and suffering upon Mr. Williams. The Court should grant an immediate stay of execution.

7. This Court has authority to grant a stay because new facts demonstrate that Plaintiff’s Eighth Amendment rights will imminently be violated by the State. The Eighth Circuit’s prior actions in these case do not prevent this Court from granting this

motion. *See In re Moser*, 69 F.3d 691, 693 (3d Cir. 1995) (upholding district court's second stay of execution based on changed circumstances after first stay of execution vacated by U.S. Supreme Court); *see also United States v. Cornelius*, 968 703, 705 (8th Cir. 1992) (although a district court on remand must “adhere to any limitations imposed” by appellate court’s mandate, the district court may “consider new evidence” unless the appellate court has specifically directed otherwise).

WHEREFORE Plaintiff moves the Court to issue an immediate stay of execution, to order the State from ceasing all actions in furtherance of Plaintiff’s execution, and to order the State to immediately undertake all necessary and appropriate medical care of Plaintiff.

Respectfully submitted,

/s/ John C. Williams
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Certificate of Service

I hereby certify that on this 24th day of April, 2017, the foregoing Emergency Motion was filed using the Court's CM/ECF system, which shall make service on all parties.

/s/ John C. Williams

JOHN C. WILLIAMS