

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

SCOTT T. LEWIS	:	CASE NO. 3:03cv196 (CSH)
<i>Petitioner</i>	:	
	:	
V.	:	
	:	
COMMISSIONER OF CORRECTION	:	
<i>Respondent</i>	:	DECEMBER 31, 2013

MOTION FOR STAY PENDING APPEAL

Pursuant to Rules 62 and 81(a)(4) of the Federal Rules of Civil Procedure, and Rule 11 of the Rules Governing Section 2254 cases in the United States District Courts, the respondent now moves to stay the Court's order that "the State of Connecticut is directed to release the Petitioner from the custody of the State of Connecticut within sixty (60) days of the date of this Ruling and Order, unless the State of Connecticut within those 60 days declares its written intention, addressed to this Court and counsel for Petitioner, to retry Petitioner on the charges against him that are referred to in this Ruling." Ruling [Doc. # 283] at 68. Failure to grant such stay would prejudice the respondent on appeal.

I. ARGUMENT

In this case, a stay of this Court's order is appropriate. Absent a stay, the State would have to retry the petitioner while its appeal is pending before the United States Court of Appeals for the Second Circuit. A retrial, however, could moot the appeal. Whether the petitioner is acquitted or convicted after such retrial, he would no longer be in custody as a result of the conviction that this Court has found to be infirm. In other words, the denial of a stay could leave the State without an opportunity for review. As

this Court has noted, the petitioner has repeatedly raised claims in the state courts of Connecticut. Those courts have given his claims their attention and have rendered numerous decisions. See Ruling [Doc. # 283] at 7 (listing state-court decisions and orders). Before the rejection of their decisions is final, however, comity requires that the respondent have a full opportunity to obtain review. For this reason, the respondent requests that this Court grant this motion and stay its order pending the respondent's appeal.

The United States Court of Appeals for the First Circuit has cautioned district courts that "if the case involves a constitutional issue of some difficulty and if . . . the petitioner's conviction had been reviewed and approved at the highest level of the state judiciary, comity usually suggests the advisability of granting the state at least a short respite during which" counsel for the respondent "may approach the federal appellate court for a stay." *LaFrance v. Bohlinger*, 487 F.2d 506, 508 (1st Cir. 1973). Similarly, the Supreme Court has noted that "a state habeas petitioner has been adjudged guilty beyond a reasonable doubt by a judge or jury, and this adjudication of guilty has been upheld by the appellate courts of the State. Although the decision of a district court granting habeas relief will have held that the judgment of conviction is constitutionally infirm, that determination itself may be overturned on appeal before the state must retry the petitioner." *Hilton v. Braunskill*, 481 U.S. 770, 779, 107 S.Ct. 2113, 95 L.Ed.2d 724 (1987).

These principles suggest that a stay be entered in the interests of comity and out of respect for the state's courts. In other words, this Court should afford Connecticut's

Appellate and Supreme Courts enough respect that it allows their decisions to be defended on appeal without interference.

II. CONCLUSION

For the reasons set forth above, and in the accompanying memorandum of law, the respondent requests that the Court grant this motion and stay the Court's order that "the State of Connecticut is directed to release the Petitioner from the custody of the State of Connecticut within sixty (60) days of the date of this Ruling and Order, unless the State of Connecticut within those 60 days declares its written intention, addressed to this Court and counsel for Petitioner, to retry Petitioner on the charges against him that are referred to in this Ruling." Ruling [Doc. # 283] at 68.

Respectfully submitted,

RESPONDENT-COMMISSIONER OF
CORRECTION

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CERTIFICATION

I hereby certify that on December 31, 2013 a copy of this motion for stay was filed electronically. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

/s/ JO ANNE SULIK _____
JO ANNE SULIK
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