

**NOTICE OF APPEAL PROCEDURES
(HABEAS CORPUS)**

JD-CR-84 Rev. 3-05
C.G.S. §§ 52-259, 52-259b, 52-470
Pr. Bk. Sec. 43-30, 63-1, 63-5, 63-6, 63-7, 63-8, 66-1

STATE OF CONNECTICUT
SUPERIOR COURT
G.A. 19

STATE OF CONNECTICUT
SUPERIOR COURT
www.jud.ct.gov



JUDICIAL DISTRICT OF TOLLAND AT ROCKVILLE	DATE OF DECISION 2010 03/17/2010 A 9:02	DOCKET NO. TSR-CV 03-0004219-S
NAME OF PETITIONER GEORGE M. GOULD, #82915	NAME OF RESPONDENT WARDEN, STATE PRISON	

- Before you can appeal to the Connecticut Appellate Court from the decision on your habeas corpus petition, the following requirement must be met:
 WITHIN TEN (10) DAYS FROM THE DATE OF DECISION, a request must be filed with either the judge who decided the case, or if said judge is unavailable to the judge of the Superior Court designated by the Chief Court Administrator to certify that a question is involved in the decision which ought to be reviewed by the Appellate Court. If you desire to appeal, you may use the bottom part of this form (*Petition for Certification - Habeas Corpus*) to make your request. (Connecticut General Statutes, Section 52-470)
 - WITHIN TWENTY (20) DAYS FROM THE ISSUANCE OF THE NOTICE TO YOU on the petition for certification, you have a right to file an appeal with the clerk of this court. (Connecticut Practice Book Sections 63-1, 80-1) The court rule concerning extensions of this twenty (20) day appeal period is printed on the back/page 2 of this form.
 - Unless the court has granted you the relief described in item 4, you must pay the following fee when you appeal: Entry fee of \$250.00; and the court may order that you give security for costs. (Connecticut Practice Book, Section 63-5; Connecticut General Statutes, Section 52-259).
 - If you desire to appeal, but you are indigent and either cannot pay the fees, costs and expenses listed in item 3 or afford to obtain a lawyer, you have a right, BEFORE THE TWENTY (20) DAY PERIOD FOR APPEAL STATED IN ITEM 2 IS OVER, to ask the court to (1) appoint a lawyer for you and (2) allow you to appeal without payment of fees, costs and expenses. Your request must be under oath and state the grounds upon which you propose to appeal and the facts concerning your financial status. You may use the attached form, JD-CR-73, to make this request. (Connecticut Practice Book, Sections 63-6 and 63-7, Connecticut General Statutes, Section 52-259b).
- If you request the relief referred to in item 4 and your request is denied, but the judge certifies that a question is involved in the decision which ought to be reviewed by the Appellate Court, you or a lawyer acting for you must file your appeal and pay the expenses listed in item 3 within twenty (20) days from the issuance of the notice to you that your request for appointment of an attorney or waiver of fees, costs and expenses was denied. (Connecticut Practice Book, Section 63-1).

**PETITION FOR CERTIFICATION
(HABEAS CORPUS)**

JD-CR-84A Rev. 3-05 C.G.S. 52-470, Pr. Bk. 80-1

STATE OF CONNECTICUT
SUPERIOR COURT
www.jud.ct.gov



JUDICIAL DISTRICT OF TOLLAND AT ROCKVILLE	DATE OF DECISION 03/17/2010	DOCKET NO. TSR-CV 03-0004219-S
NAME OF PETITIONER GEORGE M. GOULD, #82915	NAME OF RESPONDENT WARDEN, STATE PRISON	

TO:
(fill in the name of the trial Judge)

Judge **STANLEY T. FUGER, JR.**, who decided case or if said judge is unavailable to the judge of the Superior Court designated by the Chief Court Administrator to certify this matter.

The petitioner requests a certification that a question is involved in the decision on my habeas corpus petition which ought to be reviewed by the Connecticut Appellate Court. The grounds upon which I request certification are;

- set forth in the Application for Waiver of Fees, Costs and Expenses and Appointment of Counsel on Appeal, which application (Form JD-CR-73) I am submitting with this petition.
- (Specify grounds, attach additional sheets if necessary) (See attached sheet.)

NOTICE: This petition must be made within ten (10) days from the date of decision and sent to the clerk of the Superior Court for the Judicial District named above.

SIGNED Michael E. O'Hare
(PETITIONER)

(SEE REVERSE/PAGE 2 FOR CERTIFICATION)

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Sec. 66-1. Extension of Time

- (a) Except as otherwise provided in these rules, the judge who tried the case may, for good cause shown, extend the time limit provided for filing the appeal, except that such extension shall be of no effect if the time within which the appeal must be taken is set by statute and is a time limit that the legislature intended as a limit on the subject matter jurisdiction of the court to which the appeal is taken. In no event shall the trial judge extend the time for filing the appeal to a date which is more than twenty days from the expiration date of the appeal period. Where a motion for extension of the period of time within which to appeal has been filed at least ten days before expiration of the time limit sought to be extended, the party seeking to appeal shall have no less than ten days from issuance of notice of denial of the motion to file the appeal...
- (b) If an appeal has been filed, the time provided for taking any step necessary to prosecute or defend the appeal may be extended by the court in which the appeal is pending.
- (c) (1) Extensions shall be granted only upon a written motion filed with the clerk of the trial court, in the case of a preappeal motion, and with the appellate clerk, in the case of a postappeal motion. The motion, only an original of which need be filed, should set forth the reason for the requested extension, and shall be accompanied by a certification that complies with Section 62-7, but also indicates that a copy of the motion has been mailed to each of the movant's clients. The moving party shall also include a statement as to whether the other parties consent or object to the motion. A motion for extension of time to file a brief must specify the current status of the brief or preparations therefor, indicate the estimated date of completion, and, in criminal cases, state whether the defendant is incarcerated as a result of the proceeding in which the appeal has been taken.
 - (2) The appellate clerk is authorized to grant or deny motions for extension of time promptly upon their filing. Motions for extension of time to complete any step necessary to prosecute or defend the appeal, to move for or oppose a motion for reconsideration, or to petition for or oppose a petition for certification will not be granted except for good cause. Claims of good cause shall be raised promptly after the cause arises.
 - (3) An opposing party who objects to a motion for extension of time filed pursuant to (b) above shall file an objection with reasons in support thereof with the appellate clerk within five days from the filing of the motion.
 - (4) A motion for extension of time shall be filed at least ten days before the expiration of the time limit sought to be extended or, if the cause for such extension arises during the ten day period, as soon as reasonably possible after such cause has arisen. No motion under this rule shall be granted unless it is filed before the time limit sought to be extended by such motion has expired.
 - (5) Any action by the trial court judge pursuant to (a) above or the appellate clerk pursuant to (c) (2) above is reviewable pursuant to Section 66-6.

CERTIFICATION AND NOTICE



It is hereby certified that a question is involved in the decision on the petition for habeas corpus which ought to be reviewed by the Appellate Court and the foregoing Petition for Certification is GRANTED.

The foregoing Petition for Certification is hereby DENIED.

BY THE COURT (Print or type name of Judge) <i>Stanley Fuger</i>	ON (Date) <i>3/24/10</i>	SIGNED (Judge, Ass. Clerk) <i>Michael E. O'Hare</i>	DATE NOTICE ISSUED
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NAME AND ADDRESS OF PETITIONER

TO: [

MICHAEL E. O'HARE, Supv. ASA
OFFICE OF THE CHIEF STATE'S ATTORNEY
300 CORPORATE PLACE
ROCKY HILL, CT 06067

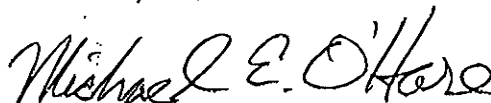
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Grounds for Appeal

1. Whether the habeas court erred in excluding evidence offered by the respondent pertaining to the circumstances surrounding Doreen Stiles' recantation of her prior sworn statement and her testimony at the petitioners' criminal trial.
2. Whether the habeas court erred in excluding evidence offered to impeach the credibility of Doreen Stiles at the hearing on the petitioner's habeas corpus petition.
3. Whether the habeas court erred in admitting evidence of third party culpability at the hearing on the petitioner's habeas corpus petition.
4. Whether the factual findings on which the habeas court based its decision were clearly erroneous.
5. Whether the habeas court erred in ruling that the petitioner was actually innocent in the absence of "clear and convincing evidence that . . . [the petitioner] is actually innocent of the crime of which he stands convicted." Miller v. Commissioner of Correction, 242 Conn. 745, 747 (1997).
6. Whether the habeas court erred in deciding claims "not raised in the petition"; Cupe v. Commissioner of Correction, 68 Conn. App. 262, 267-68, cert. denied, 260 Conn. 908 (2002); and granting relief based on those claims.
7. Whether the habeas court erred in ordering that the arrest warrant issued for the petitioner be vacated.
8. Whether the habeas court erred in ordering that the finding of probable cause regarding the petitioner be vacated.
9. Such other grounds as become apparent upon further review of the habeas court's decision and the record of this case.

CERTIFICATION

I hereby certify that copies of this document were mailed, first class postage prepaid, to Attorney Peter Tsimbidaros, P.O. 320482, Fairfield, Connecticut 06825; Attorney Joseph Visone, 41 Miscoe Road, Mendon, Massachusetts 01756; Starble & Harris, LLC, Avon Park South, One Darling Drive, Avon, Connecticut 06001; and Senior Assistant State's Attorney John M. Waddock, Office of the State's Attorney, 245 Church Street, New Haven, Connecticut 06510, on March 19, 2010.



MICHAEL E. O'HARE
Supervisory Assistant State's Attorney

STATE OF CONNECTICUT

CV03-4219

GEORGE GOULD

V.

COMMISSIONER OF CORRECTION

SUPERIOR COURT

JUDICIAL DISTRICT OF TOLLAND

AT ROCKVILLE

MARCH 22, 2010

2010 MAR 23 A 9:06

STATE OF CONNECTICUT
SUPERIOR COURT
G.A.

PETITIONER'S MOTION TO TERMINATE THE STAY

Now comes the petitioner in the above captioned matter and respectfully moves this Honorable Court, Fuger, J., pursuant to Practice Book §§61-11(c); 61-11(d) to terminate the stay of execution of the Habeas Court's Judgment. As reasons therefor, the fair administration of justice requires that the petitioner, who is innocent, must be released from his illegal confinement.

The petitioner filed a petition for a writ of habeas corpus in the Superior Court, Judicial District of Tolland claiming that he was actually innocent of the charges for which he was convicted. The Court, Fuger, J., after a hearing, granted the petition finding that the petitioner herein was actually innocent of the charges. The Court further vacated the finding of probable cause, the sentences imposed, the arrest warrants, and ordered the unconditional and immediate release of the petitioner. Thereafter, the Respondent filed a motion for review of the Habeas Court's specific finding that the automatic stay provisions of Practice Book § 61-11 did not apply in the instant case. The Appellate Court has granted the Respondent's motion and has now ordered the

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Habeas Court to comply with the provisions of Practice Book §61-11.

Practice Book §§ 61-11(c) and 61-11 (d) vests authority in the Superior Court, specifically the judge who tried the case, to terminate the stay if the Court, either after a hearing or sua sponte finds that the "fair administration of justice requires" that the stay be terminated and the judgment of the Court be placed into full effect.

In the instant case, after a 16 day habeas trial in which all percipient witnesses recanted, and the petitioners had proven to this Court by clear and convincing evidence that the petitioners were innocent, this Court held that a manifest injustice had occurred and ordered the petitioner's released. Accordingly, the interests of justice requires that the Habeas Court terminate the stay, and release the petitioner from his illegal confinement.

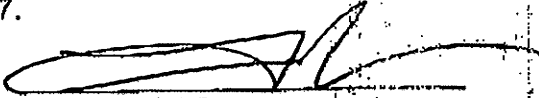
Respectfully Submitted :
The Petitioner
George Gould

By His Attorney:

Joseph Visone
Special Public Defender
JN 416585
41 Miscoe Rd.
Mendon, MA. 01756
Tel: (508) 634-9957
Fax: (508) 634-9957

Certification

It is hereby certified that the foregoing was faxed this 22nd day of March, 2010 to counsel for the respondent, SASA Michael O'Hare, c/o Chief State's Attorney's Office 300 Corporate Place, Rocky Hill, CT. 06067.


Joseph Visone
Commissioner of the Superior Court

ORDER

The Court, having considered the petitioner's motion to terminate the stay of judgment,
it is hereby ordered that the petitioner's motion to terminate the stay is

GRANTED: _____

DENIED: _____

BY THE COURT

(Fuger, J.) 3/24/10
mcb Ass't
CLMC
3/24/10 -
sic order

Docket Nos.: CV05-4000409 & CV03-0004219

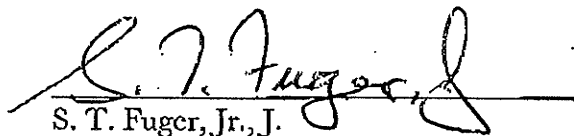
George Gould	}	State of Connecticut
Inmate # 82915	}	Superior Court
Ronald Taylor	}	
Inmate #244605	}	
vs.	}	Judicial District of Tolland
	}	at Somers
Commissioner of Correction	}	
State of Connecticut	}	March 24, 2010

**ORDERS ON RESPONDENT'S PETITION FOR CERTIFICATION TO APPEAL
AND MOTION FOR RELIEF FROM AUTOMATIC STAY DURING PENDENCY OF
APPEAL**

First, the Respondent's petition for certification to appeal is granted.

Second, as to the Petitioners' motion to dissolve the automatic stay, the Court shall partially dissolve the automatic stay, but only as to that portion of its March 17, 2010 relief that ordered the Petitioners' sentences vacated and the convictions set aside. The Respondent shall, therefore, release the Petitioners from confinement. However, given that the Respondent has petitioned for certification to appeal and this Court's granting of same, the Petitioners are to be conditionally released and admitted to bail until all of the appeals are concluded. If this Court's judgment and order is reversed and set aside, then the Petitioners shall, within twenty-four hours, report to the Respondent to recommence the service of the remaining portion of the adjudged sentences. As far as the conditions of the petitioners' release during the pendency of the appeals, this Court shall require each Petitioner to: (a) post a \$100,000.00 non-surety bond, (b) remain within the confines of the state of Connecticut, (c) report by telephone to the Bail Commissioners at the Judicial District of Tolland once per week, and (d) be placed on a GPS enabled electronic monitoring system. The motion to dissolve the automatic stay is, therefore, denied in all other respects.

It is so ordered. This Order is, per PB §61-14, stayed for ten days.


 S. T. Fuger, Jr., J.

Docket No. CV05-4000409 S
Docket No. CV03-0004219 S

Rec'd
3-23-10
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RONALD TAYLOR :

v. :

SUPERIOR COURT

COMMISSIONER OF CORRECTION :

JUDICIAL DISTRICT OF TOLLAND

GEORGE M. GOULD :

v. :

MARCH 23, 2010

COMMISSIONER OF CORRECTION :

RESPONDENT'S OBJECTION TO MOTIONS TO TERMINATE STAY

The respondent-commissioner hereby objects to the motions to terminate the stay filed by the petitioners in this case. The petitioners seek an order terminating the stay pursuant to the provisions of Practice Book § 61-11(c). The petitioners contend that the "due administration of justice" requires termination of the stay and their immediate release from confinement. The petitioners' motions should be denied because they cannot meet the requirements for the termination of a stay set forth in Practice Book § 61-11(c). Moreover, if the court concludes that the interests of justice require the immediate release of the petitioners, it should do so by admitting them to bail and setting reasonable conditions upon their release.

I. PROCEDURAL BACKGROUND

After trial by jury in the Judicial District of New Haven the petitioners were convicted of felony murder, in violation of General Statutes §53a-54c; robbery in the first degree, in violation of General Statutes §53a-134; attempted robbery in the first degree, in violation

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of General Statutes §§ 53a-134 and 53a-49; and conspiracy to commit robbery in the first degree, in violation of General Statutes §§53a-134 and 53a-48. The trial court, *Fracasse, J.*, sentenced each petitioner to a total effective sentence of imprisonment for eighty years. The petitioners appealed and his convictions were affirmed by the Connecticut Supreme Court. State v. Gould, 241 Conn. 1 (1997).

Thereafter, the petitioners filed a habeas corpus petition claiming that they had been denied their right to the effective assistance of counsel and that they were actually innocent of the crimes of which they were convicted. On March 17, 2010, following a joint hearing, this court denied the petitioners claim of ineffective assistance of counsel but found that they were actually innocent. Memorandum of Decision at 48.

II. ARGUMENT

The petitioners' motions to terminate the stay in this case should be denied because they cannot meet the requirements for the termination of a stay set forth in Practice Book § 61-11(c). If, however, this court concludes that the interests of justice require the immediate release of the petitioners, it should do so by admitting the petitioners to bail and setting reasonable conditions upon their release.

A. The Petitioners Cannot Meet the Requirements for Terminating a Stay Under Practice Book § 61-11(c)

Practice Book § 61-11(a) provides that when an appeal is filed, "proceedings to enforce or carry out the judgment ... shall be stayed until the final determination of the cause...." Under Practice Book § 61-11(c), the trial court has discretion to vacate a stay pending appeal only in two limited circumstances. These are: "(1) ... the appeal is taken only, for delay or (2) the due administration of justice so requires. Here, the respondent

is seeking to uphold a presumptively valid conviction for an extremely serious crime. Thus, it cannot seriously be contended that the respondent's appeal is only for the purposes of delay. See Summerville v. Warden, 229 Conn. 397 423, 641 A.2d 1358 (1994) (in habeas proceeding, petitioner comes before court not as one who is innocent but as one who has been convicted by due process of law). Thus, the habeas court should vacate a stay pending appeal only when "the due administration of justice so requires."

In Griffin Hospital v. Commission on Hospitals and Health Care, 196 Conn. 451(1985), the Supreme Court identified four factors to be considered in weighing issues involving "the due administration of justice." These factors are: "(1) the likelihood that the defendant will prevail on appeal; (2) the irreparability of the harm to be suffered from the execution of the judgment; (3) the effect of the stay on other parties to the proceeding; and (4) the public interest." Id., at 459. In this case, each factor militates toward keeping the stay in place.

First, it is likely that the respondent will prevail on appeal. This court granted the petitioners habeas corpus relief on the basis that they had established their actual innocence of the crimes of which they were convicted. The court noted that the testimony of Doreen Stiles, one of the recanting witnesses in this case, "is the keystone of the evidence upon which [the petitioner's] convictions rest." Memorandum of Decision at 48. The court granted the petitioners relief on the basis that Stiles' testimony "simply cannot be true." Id. Thus, this court found that the petitioners had established actual innocence based on its conclusion that the evidence presented at trial was insufficient to establish the petitioner's guilt. It is clear, however, that a showing of actual innocence requires substantially more.

In Miller v. Commissioner of Correction, 242 Conn. 745 (1997), the Connecticut Supreme Court articulated the standard of proof for a claim of actual innocence in a habeas corpus case. The court held that:

[T]he proper standard for evaluating a freestanding claim of actual innocence is two-fold. First, the petitioner must establish by clear and convincing evidence that . . . he is actually innocent of the crime of which he stands convicted. Second, the petitioner must also establish that, after considering all of that evidence and the inferences drawn therefrom as the habeas court did, no reasonable fact finder would find the petitioner guilty of the crime." Id. at 747.

Miller, supra, 747. Thus, in order to prevail on his claim, the petitioner must present "an exceedingly persuasive case that [he] is actually innocent." Id., at 796, quoting Ex Parte Elizondo, 947 S.W.2d 202, 206 (Tex. Crim. App. 1996). Here, the evidence before the court falls far short of establishing this first prong of the Miller test. Accordingly, the court's ruling on the petitioner's claim of actual innocence will not withstand appellate review.

Moreover, because of the sweeping nature of the court's ruling, termination of the stay would require the petitioners' release from confinement without any court being able to exercise jurisdiction over them. This would permit the petitioners to leave the state or to take other action that would make it difficult for the state to exercise jurisdiction over them in the event that this court's ruling is subsequently overturned on appeal. If the petitioners were to absent themselves from the state or to go into hiding, the respondent's interests would certainly be harmed. Where there are no third parties to the proceeding, as in this case, the equities favor keeping the stay in place pending appeal. See Popsil v. Popsil, 1999 WL 130595 (Conn. Super. 1999). Finally, the public interest is clearly served by keeping dangerous and violent criminals incarcerated.

B. If the Interests of Justice Require the Immediate Release of the Petitioners, this Court Should Admit them to Bail and Release them Subject to Reasonable Conditions

It is clear under both common law and General Statutes § 54-63f that a court may admit an individual to bail pending a direct appeal. Accordingly, a habeas court "has an inherent power to issue an order admitting a petitioner to bail." Gaines v. Manson, 194 Conn. 510, 529 (1984).

An order admitting the petitioners to bail would allow them to be released from prison during the pendency of the respondent's appeal. It would also address the respondent's concerns by requiring the petitioners to remain under the jurisdiction and supervision of the court. Imposing reasonable conditions on their release would ensure that the petitioners will be available if it becomes necessary for them to be returned to the respondent's custody. Indeed, in Miller v. Warden, State Prison, Docket No. CV92-1566S, Judicial District of Tolland (1996 WL 222404), this was precisely the action taken by Judge Bishop after ruling that the petitioner had established his claim of actual innocence.

Accordingly, if this court determines that the interests of justice require the immediate release of the petitioners from confinement, then admitting them to bail would be the most appropriate way to achieve that result.

WHEREFORE, this court should sustain the respondent's objection and deny the petitioner's motion to terminate the stay in this case pursuant to Practice Book § 61-11(c).

Respectfully submitted,

BRIAN K. MURPHY
COMMISSIONER OF CORRECTION
STATE OF CONNECTICUT

RESPONDENT

By: Michael E. O'Hare

MICHAEL E. O'HARE
Supervisory Assistant State's Attorney
Civil Litigation Bureau
Office of the Chief State's Attorney
300 Corporate Place
Rocky Hill, Connecticut 06067
Telephone: (860) 258-5807
Facsimile: (860) 258-5968
E-mail: michael.ohare@po.state.ct.us
Juris No. 402480

ORDER

The respondent's objection to the petitioner's motion to terminate the stay in this case, having been considered, is hereby ORDERED:

_____ SUSTAINED
_____ OVERRULED

DATE: _____

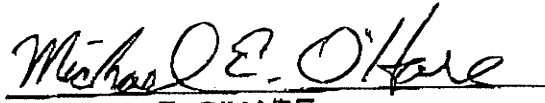
JUDGE: (Fuger, J.) 3/24/10

CLERK: MLB
ASS'T CLERK

3/24/10 -
See order attached 6

CERTIFICATION

The undersigned attorney hereby certifies that a copy of this document was faxed and mailed, first class postage prepaid, to Attorney Peter Tsimbidaros, P. O. Box, 320482, Fairfield, Connecticut, 06825, Telephone: (203) 333-5111, Fax: (203) 333-5111; Attorney Joseph Visone, 41 Miscoe Road, Mendon, Massachusetts 01756, Telephone: (508) 634-9957; Starble & Harris, LLC, Avon Park South, One Darling Drive, Avon, Connecticut 06001, Telephone (860) 678-7775; and Senior Assistant State's Attorney John M. Waddock, Office of the State's Attorney, 245 Church Street, New Haven, Connecticut 06510, Telephone: (203) 6823, Fax: (203) 789-6400, on March 23, 2009.


MICHAEL E. O'HARE
Supervisory Assistant State's Attorney