IN THE
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

MICHAEL ANTHONY TAYLOR,	)	
	)	
Plaintiff-Appellant,	)	
	)	App. No. 06-1397
v.	)	
	)	Dist. No. 05-4173-WMJC
LARRY CAMPBELL, et al.,	)	
	)	
Defendants-Appellees.	)	

APPLICATION FOR STAY OF EXECUTION

COMES NOW the plaintiff-appellee, Michael Anthony Taylor, by and through counsel, John William Simon, and moves the Court for its order granting a stay of execution pending its disposition on the merits of his appeal from the denial of relief in his action under 42 U.S.C. § 1983 concerning the Missouri lethal injection process, including a precursor operation analogous to a "cut-down" and the participation of a physician in violation of the Hippocratic Oath and the AMA Code of Ethics.

In support of this application, the plaintiff-appellant states and alleges that he has not had an opportunity to litigate the substance his claims fully and fairly since the removal of the district judge who had been handling the case by regular assignment from its inception, and that the new district judge precluded him from presenting evidence from the only

witnesses qualified to give it. These omissions are directly or indirectly the fruit of the defendants' and their privies' manipulation of the judicial process to prevent anyone from receiving a hearing on the merits of claims relating to their form of lethal injection—as recently as apparent sewer service of a pleading before this very Court last night.

On June 3, 2006, actually before he had ascertained the specific means by which the State of Missouri intended to execute him, the petitioner filed an action under 42 U.S.C. § 1983, *Taylor v. Caldwell*, No. 05-CV-4173-SOW, seeking to raise federal constitutional grievances concerning the chemicals, personnel, and other incidents of lethal injection. After the Missouri Supreme Court set an execution date in the previous leading case in this area, *Johnston v. Campbell*, he learned of a precursor operation variously referred to as "central line access" or "femoral vein access" and that the state used a licensed physician in the process in violation of the Hippocratic Oath and the AMA Code of Ethics. Richard D. Clay, another condemned person in the Missouri Department of Corrections, intervened in the action, represented by Elizabeth Unger Carlyle and Jennifer

Herndon. Plaintiffs filed an amended complaint setting forth their claims about the precursor operation and the physician participation.

On December 28, 2005, the United States District Court for the Western District of Missouri issued an order denying the defendant's motion to dismiss for failure to state a claim, and holding that the case needed to go forward. The next business day, the undersigned counsel faxed a copy of this order to the Missouri Supreme Court with a cover letter advising it of the order. The second business day after counsel provided this notice, the Missouri Supreme Court set an execution date against Michael Taylor, the lead plaintiff in the federal action.

On January 19, 2006, the Hon. Scott O. Wright issued an order setting a hearing in the federal case for February 21, 2006, with the hearing to go over to February 22 if the Court needed a second day's worth of evidence. Through Magistrate Judge William A. Knox, Judge Wright had the previous day informed counsel that he had tried to set the hearing before February 1, 2006, but that he could not do so in light of pending matters on its calendar. Without giving a reason or offering any intermediate course of action, counsel for the defendants indicated they would seek relief from Judge Wright's order.

On January 20, 2006, the defendants filed an application to vacate Judge Wright's preliminary injunction, to which I prepared a response. On January 27, 2006, counsel for Reginard Clemons, another condemned person in the Missouri Department of Corrections, filed a motion to intervene in the action. Mr. Clemons is represented by New York City law firm which would have provided substantial litigation firepower for the plaintiffs at the hearing on February 21, 2006.

On January 29, 2006, a panel of the United States Court of Appeals for the Eighth Circuit vacated Judge Wright's order, directed the Chief Judge of the district court to reassign the case to another district judge, and directed the new district judge to conduct a hearing immediately and to render judgment by noon on the date the Missouri Supreme Court had set for the execution. It also stayed the execution through 11:59 p.m. on Friday, February 3, 2006.

In light of the panel's mandating another snap hearing—as had occurred in the Donald Jones, Vernon Brown, and Timothy Johnston cases with which the undersigned was familiar—and the new district judge's refusal to let counsel call the physician who participates in Missouri's executions, counsel for Messrs. Clay and Clemmons, respectively,

dismissed their claims without prejudice and withdrew their motion to intervene.

This left the undersigned sole practitioner alone to litigate a snap hearing in a capital case involving several experts. Simply procuring their participation by phone took substantial time and effort. Counsel was not able to contact one of them, who had been out of town, until the morning of the second day (yesterday), and he could not be ready to testify until the next day, which the new district judge did not allow. As a result of these unusual and irregular demands, the undersigned was unable to do the kind of job on this capital case involving arcane scientific subjects that he would typically do on the ***least*** grave and sensitive matters in his practice.

Because he had to conduct a telephone hearing solo two days in a row, the undersigned counsel was unable to prepare a pleading in this Court to seek to have the very order requiring the hearing overturned, and had to suspend my activities in support of execution clemency, which the same court has authorized me to engage in under its appointment.

Defendants sought to have the Supreme Court vacate this Court's panel's stay in its entirety. That Court declined. After the district judge issued the order, rendered inevitable by the circumstances under which the

lawyers tasked to handle the hearing while the undersigned handled clemency advocacy, were removed by the technical knock-out of December 29, 2006, the defendants filed a motion before this Court to vacate its three-day stay. The undersigned did not receive this motion by e-mail until several minutes before this Court acted on it (the second time he called the Office of the Attorney General to request it, after learning from a call to this Court that it had been filed); he did not receive it by fax at the number in his letterhead (or any other fax number) until (according to the readout on his fax machine) 9:26 p.m., or "21:26," *i.e.*, ***only three minutes*** before this Court e-mailed counsel its ***ruling*** on the motion.

Having received no response to the state's motion (for the reason just specified), the panel cut its stay back to 5:00 p.m. today. Defendants were not satisfied with that, and applied to the Supreme Court to vacate its stay in its entirety.

Appellant interposes this motion in anticipation that either the Supreme Court will vacate the existing stay or it will take longer than seven hours and thirteen minutes to process his appeal.

WHEREFORE, the appellant prays the Court for its order as aforesaid.

Respectfully submitted,

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Certificate of Service

I hereby certify a true and correct copy of the foregoing was [Click here and type mode of service] this ____ day of [Click here and type Month, Year of service], to the office of:

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Attorney for Appellant