

2013 Ark. 151

NOTICE: THIS DECISION WILL NOT APPEAR IN THE SOUTHWESTERN REPORTER. SEE REVISED SUPREME COURT RULE 5-2 FOR THE PRECEDENTIAL VALUE OF OPINIONS.

Supreme Court of Arkansas.

Jack Harold JONES, Marcel Williams, Jason McGehee, Don Davis, Bruce Ward, and Stacey Johnson,
Petitioners

v.

Ray HOBBS, Director, Arkansas Department of Correction; and Arkansas Department of Correction,
Respondents.

Nos. 10–260, 10–351, 10–428, 11–577. | April 11, 2013.

Respondents’ Motion to Lift Stays of Execution; Petitioners’ Motion to Take Matter as a Case.

Attorneys and Law Firms

Josh Lee, Arkansas Federal Public Defender Office, for petitioners Jason McGehee; Joseph W. Luby, Death Penalty Litigation Clinic, for petitioner Bruce Ward; Montgomery, Adams & Wyatt, by: Dale E. Adams, for petitioner Jack Jones; and Jeff Rosenzweig, for petitioners Jack Jones, Jason McGehee, and Stacey Johnson.

Dustin McDaniel, Att’y Gen., by: David A. Curran, Ass’t Att’y Gen., for respondents.

Opinion

PER CURIAM.

In **1 Hobbs v. Jones*, 2012 Ark. 293, — S.W.3d —, petitioners Jack Harold Jones, Marcel Williams, Jason McGehee, Don Davis, Bruce Ward, and Stacey Johnson challenged Arkansas’s method-of-execution statute, Arkansas Code Annotated section 5–4–617 (Supp.2011). Prior to submission, petitioners filed renewed motions for stays of execution during the pendency of their appeal, and on May 13, 2010, we granted the motions for stay of execution. In *Hobbs*, this court held that section 5–4–617 violated the Arkansas Constitution’s separation-of-powers doctrine. Our mandate issued on July 11, 2012. In response to this court’s decision in *Hobbs*, the 89th General Assembly enacted Act 139 of 2013, which substantially amended section 5–4–617. Act of Feb. 20, 2013, No. 139 (amending Ark.Code Ann. § 5–4–617 (Supp.2011)).

On **2* March 8, 2013, respondents Arkansas Department of Correction and Ray Hobbs, as its director, filed a motion to lift the stays of execution, stating that “litigation under the prior method-of-execution statute has come to an end, and so there is no reason for the current stays to remain in effect.” On March 18, 2013, petitioners simultaneously filed their response in opposition to lifting the stays and filed a motion to take the matter as a case, claiming that this court must now determine whether Act 139 of 2013 passes constitutional muster. Subsequently, respondents filed a combined response, asserting that our decision in *Hobbs* “may very well have dissolved [the stays] by operation of law” when this court decided the merits of the case. Respondents claimed that they filed, as a precautionary measure, the motion requesting that this court formally lift the stays. However, they also stated that this court will likely determine the constitutionality of Act 139 and that a new lawsuit would cause a “waste of judicial resources.” Respondents did not object to this court establishing a briefing schedule on this issue.

The respondents are correct that the stays of execution are no longer in place. They dissolved upon the issuance of our mandate on July 11, 2012. *See State v. Robbins*, 336 Ark. 377, 985 S.W.2d 296 (1999) (per curiam); *see also Bell v. Thompson*, 545 U.S. 794 (2005) (noting that when the United States Supreme Court denied rehearing in the case, the court of

appeals' second stay dissolved by operation of law). Therefore, respondents' request that we lift the stays is moot.

Furthermore, we do not have original jurisdiction of this matter to take it as a case. *See* Ark. Const. amendment 80, § 2. On the contrary, *3 section 6 of amendment 80 to the Arkansas Constitution provides, "Circuit Courts are established as the trial courts of original jurisdiction of all justiciable matters not otherwise assigned pursuant to this Constitution." Thus, we conclude that a circuit court would have jurisdiction of a constitutional challenge advanced by petitioners regarding the newly enacted Act 139. For these reasons, respondents' motion to lift stays of execution is moot, and we deny petitioners' request to take the matter as a case.

CORBIN, J., not participating in Case No. 10–428 (Stacey Johnson).