

No.17A970
CAPITAL CASE

IN THE SUPREME COURT OF THE UNITED STATES

MICHAEL WAYNE EGGERS,
Petitioner,

v.

STATE OF ALABAMA,
Respondent.

On Petition for a Writ of Certiorari to the
Court of Appeals for the Eleventh Circuit

**OPPOSITION TO EGGERS'S FORMER APPOINTED COUNSEL'S APPLICATION
FOR STAY OF EXECUTION**

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EXECUTION SCHEDULED FOR MARCH 15, 2018

REASONS FOR DENYING THE STAY

Michael Wayne Eggers, an Alabama death-row inmate, discharged his appointed counsel, waived further appeal of the denial of his federal habeas petition, and sought an expedited execution for the capital murder of Bennie Francis Murray, whom Eggers choked and beat to death. After conducting an extensive evidentiary hearing, the district court found that “Eggers has made a rational choice to dismiss appointed counsel and to abandon his appeal.” *Eggers v. State*, 212 F. Supp.3d 1130, 1148 (N.D. Ala. 2016). The Eleventh Circuit affirmed, noting that the district court’s decision, based on “an exceedingly full record,” was not clearly erroneous, and holding that “there is no longer any live controversy between Eggers and [the State].” *Eggers v. Alabama*, 876 F.3d 1086, 1102, 1106 (11th Cir. 2017).

Despite the fact that Eggers’s decision to discharge his counsel and waive the appeal of his federal habeas petition was thoroughly vetted by the district court, Eggers’s former appointed counsel filed an application for a stay of execution four days before his scheduled execution. Even if appointed counsel had standing to request the stay of an execution that Eggers has repeatedly requested, the application must be denied for several reasons.

First, appointed counsel cannot establish “a significant possibility of success on the merits,” that would justify a stay. *Hill v. McDonough*, 547 U.S. 573, 584 (2006). As noted above, the district court found Eggers to be competent to discharge his attorneys and waive his appeals after a full evidentiary hearing. The district court’s competency determination was “a purely factual question,” *Eggers*, 876 F.3d at 1094,

and appointed counsel have failed to identify any clearly erroneous aspect of the district court's order. Second, the application should be denied based on appointed counsel's delay. Appointed counsel delayed in requesting a stay until the week of Eggers's execution, despite the fact that the Eleventh Circuit affirmed Eggers's competency to waive his appeals and proceed to his execution in December 2017. Third, appointed counsel's allegation that the proceedings were "truncated" in the Alabama Supreme Court violates principles of federalism and comity, given that the Alabama Supreme Court was made aware of the procedural posture of Eggers's case and nonetheless declined to vacate the execution date. Finally, the balance of equities weighs against the grant of a stay of execution. Eggers himself has made the decision to waive further appeals and proceed with his execution to "eliminat[e] any further undue delays in my execution providing the people with justice long overdue." *Eggers*, 876 F.3d at 1102. For these reasons, appointed counsel have failed to establish that there are "substantial grounds upon which relief might be granted," *Barefoot v. Estelle*, 463 U.S. 880, 895 (1983), and thus, the application for a stay of execution should be denied.

I. Appointed counsel cannot show a substantial likelihood of success on the merits because the district court's factual finding that Eggers was competent to waive his appeals is not clearly erroneous.

As noted more fully in the State's Brief in Opposition, there are no "substantial grounds upon which relief might be granted," *Barefoot*, 463 U.S. at 895, because the district court correctly determined that Eggers was competent to dismiss his appointed counsel and waive his appeals. The district court did so after conducting

an extensive hearing considering expert testimony, Eggers's testimony, and the court's observations of Eggers. Indeed, the district court specifically noting that it had

observed Eggers's behavior and demeanor at the hearing, and there was absolutely nothing about either that indicated mental incompetence or delusional thought processes. To the contrary, perhaps the most persuasive evidence that Eggers understands his legal situation is his own testimony. He made it clear that he understands his claims, what these proceedings are for, that he was convicted of capital murder, that he was sentenced to death, how the appellate process worked, how the state post-conviction proceedings operated, that he is now in federal habeas corpus proceedings, that his attorneys did not present the claims he wanted them to, and that he does not want to go on to the Eleventh Circuit Court of Appeals.

Eggers, 212 F. Supp.3d at 1147. The Eleventh Circuit's opinion affirmed the district court and meticulously detailed why the district court's factual finding that Eggers's personality disorder did not prevent him from making a rational choice to dismiss his appointed counsel and waive his appeals was not clearly erroneous.

Appointed counsel do not seriously contest the district court's factual finding, nor do they point to any clearly erroneous determinations in the application for a stay or question presented. Instead, appointed counsel present a convoluted argument, namely, that this Court should review whether Eggers's decision to discharge his counsel was to hasten his execution, or, as appointed counsel contend, whether Eggers discharged his counsel because he wanted to represent himself. Pet. 16-18. But appointed counsel's argument cannot demonstrate a significant likelihood of success for several reasons.

First, appointed counsel do not have standing to assert this argument, but only had limited standing to appeal the district court's findings that Eggers was

competent. *Ford v. Haley*, 195 F.3d 603, 624 (11th Cir. 1999). As noted above, appointed counsel have not and cannot specifically challenge the district court's factual finding that Eggers is competent. Given that he is mentally competent, appointed counsel has not shown that Eggers, who is the real party in interest, cannot pursue his own case. Thus, appointed counsel have no standing to assert new arguments outside of challenging the district court's competency determination.

Second, the question presented by appointed counsel does not change the fact that Eggers is competent. The district court considered whether Eggers wanted to represent himself and continue his appeal in weighing the evidence of whether Eggers was competent: "when the Court then asked him if he wanted the Court to dismiss his counsel and allow him to continue his appeal *pro se*, he denied that he wanted to do that." *Eggers*, 212 F. Supp.3d at 1140. While appointed counsel may speculate about the reasons Eggers wanted to discharge his counsel and waive his appeals, the fact remains that he is competent to do so.

Third, appointed counsel's question presented is factually incorrect. Appointed counsel hypothesize whether Eggers truly wants to be executed or whether he really wants to continue litigating his case *pro se*. Pet 17. Eggers may have sought to represent himself years ago during Rule 32 proceedings and at the beginning of federal habeas proceedings. However, as the district court correctly found, from the time that his habeas petition was denied Eggers consistently has sought to waive his appeals and proceed with his execution. Specifically, the district court found that "If there was any doubt raised from Eggers's testimony during the hearing as to whether

he truly wanted to withdraw his appeal in its entirety, he dispelled it in pleadings he filed subsequently.” *Eggers*, 212 F. Supp.3d at 1147-48 (citing Doc. 161) (“My position shall not change until I am executed, but an appeal shall not be filed....”); (“Let's move forward eliminating any further undue delays in my execution providing the people with justice long overdue.”). Indeed, since December 2015, Eggers had been consistent in requesting both the federal courts and the Alabama Supreme Court to set his execution date. *See* Docs. 136, 139, 161. Thus, even if they had standing to assert this claim, former appointed counsel cannot demonstrate a substantial likelihood of success on their question presented because the record confirms that Eggers desires to waive his appeals and proceed with this execution and that he is competent to do so.

II. Appointed counsel’s request for a stay should be denied because they unreasonably delayed in requesting a stay.

The fact that Eggers’s former appointed counsel waited until the week of Eggers’s execution to seek a stay from this Court is reason enough for this Court to deny his request for a stay. This Court has held that “[b]oth the State and the victims of crime have an important interest in the timely enforcement of a sentence.” *Hill*, 547 U.S. at 584. Further, “[a] court considering a stay must also apply ‘a strong equitable presumption against the grant of a stay where a claim could have been brought at such a time as to allow consideration of the merits without requiring entry of a stay.’” *Id.* (quoting *Nelson v. Campbell*, 541 U.S. 637, 650 (2004)).

The record demonstrates that appointed counsel have unreasonably delayed bringing this request for no reason other than to delay Eggers’s execution, in spite of

his express desire to proceed with his execution. The Eleventh Circuit affirmed the district court's finding that Eggers was competent to discharge his counsel and waive his appeals on December 5, 2017. *Eggers*, 876 F.3d 1086. On January 23, 2018, the Alabama Supreme Court set Eggers's execution date for March 15. The Eleventh Circuit denied appointed counsel's petition for rehearing *en banc* on February 7. Pet. App. 16a. Yet appointed counsel delayed over a month in seeking review in this Court until the week of Eggers's execution.

While under normal circumstances a petitioner would have ninety days to file a petition for writ of certiorari, appointed counsel were clearly aware that Eggers desired to proceed with his execution and that his execution was imminent. In November 2017, Eggers filed a motion in the Alabama Supreme Court seeking to set his execution date, which that court held in abeyance only until the appeal pending before the Eleventh Circuit was resolved. Moreover, it was clear during the evidentiary hearing before the district court in 2016 that if Eggers waived his appeal of the denial of his habeas petition, he would be subject to being executed. *Eggers*, 212 F. Supp.3d at 1140. Thus, it should have been clear to appointed counsel that Eggers's execution was imminent, given his desire to waive his appeals and proceed to his execution. Appointed counsel could have sought immediate review in this Court after the Eleventh Circuit affirmed the district court, instead of seeking *en banc* review. But appointed counsel's chosen strategy, coupled with the delay in filing a petition for writ of certiorari until the week of Eggers's execution, establishes that

the sole purpose behind the filings is to cause delay. For this reason, the application for a stay should be denied.

III. Appointed counsel's request for a stay of execution violates principles of federalism and comity.

Appointed counsel's application for a stay of execution also should be denied because there is no basis to interfere with the Alabama Supreme Court's decision to set Eggers's execution date. Appointed counsel's application asserts that a stay is needed because there was an "exigency" to the litigation in the Alabama Supreme Court and because the Alabama Supreme Court was not aware that appointed counsel had filed a petition for rehearing *en banc* in the Eleventh Circuit. But appointed counsel's contention that Eggers's execution was set in an exigent manner and that the Alabama Supreme Court was unaware of the status of his case is inaccurate. Moreover, appointed counsel's attempt to stay Eggers's execution on this basis should be rejected, as it infringes on the Alabama Supreme Court's ability to manage its own affairs and set execution dates at the appropriate time consistent with state law.

Contrary to appointed counsel's contention, the Alabama Supreme Court was aware of the procedural history of Eggers's case. After the court set Eggers's execution date on January 23, 2018, on February 2, the State filed an updated response, noting that former appointed counsel had filed a petition for rehearing *en banc* in the Eleventh Circuit. *See Ex parte Michael Wayne Eggers*, No. 1040344, Mot. at 6. On February 6, appointed counsel filed a motion to vacate Eggers's execution date, noting that it had filed a petition for rehearing *en banc*, and that if that petition

was denied, it would seek certiorari in this Court. *See Ex parte Michael Wayne Eggers*, No. 1040344, Mot. at 4 (Feb. 6, 2018). In its response on February 8, the State notified the Alabama Supreme Court that the Eleventh Circuit denied appointed counsel's rehearing petition on February 7. *See Ex parte Michael Wayne Eggers*, No. 1040344, Resp. at 5 (Feb. 8, 2018). The Alabama Supreme Court denied appointed counsel's motion to vacate on March 1. Thus, the Alabama Supreme Court was fully aware of the procedural posture of Eggers's case and there is no reason for this Court to stay Eggers's execution based on issues that a state court has already addressed and was capable of addressing within its own authority and jurisdiction.

IV. The balance of equities weigh heavily against a stay.

As this Court has held, "equity must be sensitive to the State's strong interest in enforcing its criminal judgments without undue interference from the federal courts." *Hill*, 547 U.S. at 584. Eggers was properly convicted and sentenced to death for the brutal murder of Bennie Francis Murray, in which he beat and choked her to death by, at one point, standing on a tree limb on her throat in an effort to kill her. Eggers never denied murdering Francis and a jury appropriately recommended a death sentence.

The State and the victim's interest in carrying out Eggers's lawful execution is strong. Indeed, by waiving the appeal of his habeas petition and seeking an expedited execution, Eggers has recognized this compelling public interest, stating that "[t]he delays in the process are not beneficial to any party," and requesting the elimination of "any further delays in my execution providing the people with justice long overdue."

Eggers, 212 F. Supp. 3d at 1148. Appointed counsel have failed to articulate how the equities justify a stay in this case, given both the public's strong interest in seeing justice carried out and Eggers' express desire to see justice carried out by eliminating further delays in his execution.

CONCLUSION

Wherefore, for the foregoing reasons, Respondents respectfully request this Court deny appointed counsel's request for a stay of execution.

Respectfully submitted,

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s/ Thomas R. Govan, Jr.

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