

FILED

SEP 18 2006

LEONARD GREEN, Clerk

No. 06-6178

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DARYL KEITH HOLTON,)
Petitioner - Appellant)
)
v.)
)
RICKY BELL, WARDEN,)
Respondent - Appellee)

O R D E R

Before: MERRITT, GIBBONS, and GRIFFIN, Circuit Judges

This matter comes before the court upon the appeal of the petitioner from the United States District Court for the Eastern District of Tennessee dismissing as unauthorized an application for a writ of habeas corpus, 28 U.S.C. §2254, filed on his behalf by the Federal Defender Services of Eastern Tennessee. The appellant has filed a motion for a stay of the execution of sentence, scheduled to be carried out at 1:00 A.M. on Tuesday, September 19, 2006, and the appellee has filed a response in opposition to that motion.

Upon consideration of the record of proceedings before the district court and the pleadings before this court, the motion for stay of execution is hereby GRANTED. We do so to permit briefing on the issue for which the district court granted a certificate of appealability, that is, its finding that "the Federal Defender Services has failed to demonstrate, under the standard established in *Harper v. Parker*, 177 F.3d 567, 572 (6th Cir. 1999), reasonable cause to believe that Mr. Holton is not competent to make a rational decision to dismiss his pending federal habeas corpus petition." Briefs shall be filed as follows:

The brief of the petitioner-appellant shall be filed not later than the close of business Monday, September 25, 2006;

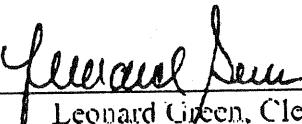
The brief of the respondent -appellee shall be filed not later than the close of business Friday, September 29, 2006;

The reply brief, if any, of the petitioner-appellant shall be filed not later than the close of business Wednesday, October 4, 2006.

The court notes that the issuance of a stay is also appropriate in light of the filing of an original petition for a writ of habeas corpus in the United States Supreme Court, in which Mr. Holton himself requests a stay of execution and raises new issues.

The court further requests that Mr. Holton personally advise this court, not later than September 25, 2006, whether it is his intent to pursue the instant appeal and, if so, whether he will do so *pro se* or through counsel.

ENTERED BY ORDER OF THE COURT



Leonard Green, Clerk