

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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No. 12-15422

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JOHN FERGUSON,

Petitioner - Appellant,

versus

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent - Appellee.

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Appeal from the United States District Court  
for the Southern District of Florida

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Before CARNES, WILSON and PRYOR, Circuit Judges.

PER CURIAM:

This court is in receipt of the district court's order, issued October 23, 2012, granting a Certificate of Appealability (COA) on the following issues:

A. Whether the decision of the Florida Supreme Court involved an unreasonable application of the Un[ited] States Supreme Court's decision[s] in *Ford* and *Panetti*.

B. Whether the Florida Supreme Court's affirmance of the state trial court was based on an unreasonable determination of the facts in light of the

evidence presented in the state court proceeding, viz, that (a) the petitioner has a documented history of paranoid schizophrenia; (b) he is not malingering, and (c) he has a fixed grandiose delusion that he is the “Prince of God.”

Pursuant to Eleventh Circuit Rule 22-4(a)(7), this panel is required to “grant a temporary stay pending consideration of the merits of the appeal if necessary to prevent mooting the appeal.” However, “the panel may, after hearing, deny a stay if it makes written findings that:

- (i) the appeal is frivolous, or is lacking any factual basis in the record, or is squarely foreclosed by statute, rule, or authoritative court decision; or
- (ii) the petition is successive, and the requirements for dismissal are met.”

In this case, Ferguson’s death will render his appeal moot. Accordingly, the court hereby:

- (1) Grants the Petitioner’s Emergency Motion for Stay of Execution;
- (2) Directs the parties to brief the Rule 22-4(a)(7)(i) and (ii) issues, including whether the temporary stay should be extended, and the merits of the issues identified in the Certificate of Appealability, pursuant to the following schedule:

Petitioner shall file a brief on the merits by Monday, October 29, 2012, at 12:00 p.m. Respondent shall have until Monday, November 5, 2012, at 12:00 p.m. to file a response brief. Petitioner shall then have until Tuesday, November 6,

2012, at 12:00 p.m. to file a reply brief. The parties are directed to file the briefs electronically and to serve the briefs to opposing counsel electronically at the same time.

**DONE AND ORDERED.**