

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

DANIEL O. CONAHAN, JR.,

Petitioner,

v.

Case No: 2:13-cv-428-FtM-29MRM

SECRETARY, DOC and FLORIDA
ATTORNEY GENERAL,

Respondents.

ORDER

This matter comes before the Court on Petitioner's Second Motion to Stay and Abey Federal Proceedings (Doc. #51, Motion) filed on October 27, 2017. Respondent filed a Response to the motion (Doc. #53) on January 5, 2018. For the reasons set forth herein, the Court will grant a second stay of this action.

Petitioner requests that the Court issue a second stay of this action to allow him to exhaust a second state court postconviction motion predicated upon Hurst v. Florida, 136 S. Ct. 616 (2016), Hurst v. State, 202 So. 3d 40 (Fla. 2016), and the revised Florida Statute § 921.141, to assert a new claim: "The eighth and fourteenth amendments to the United States Constitution, and Florida Constitution, require Mr. Conahan receive the retroactive application of the substantive right established by Chapter 2017-1." (Doc. #51, ¶7).

Respondents oppose a further stay of this action. Doc. 53 at 1. Respondents argue that Petitioner's claim raised in his postconviction motion is not a potentially meritorious claim because is foreclosed under state law, and the Florida Supreme Court is unlikely to reverse" the Florida trial court's decision. Id. at ¶6.

The Court finds a stay is appropriate in this case. Rhines v. Weber, 544 U.S. 269, 274 (2005). Petitioner's appeal of the denial of his second motion for postconviction relief remains active and pending in the Florida Supreme Court (Case Number SC18-303). While Respondent's contend that the outcome of the appeal is "unlikely," the Florida Supreme Court's decision could impact any determinations on Petitioner's penalty-phase claims.

ACCORDINGLY, it is hereby

ORDERED:

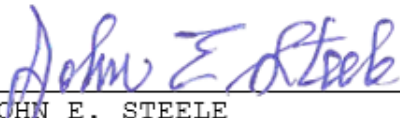
1. Petitioner's Second Motion to Stay and Abey Federal Proceedings (Doc. #51) is **GRANTED** to the extent set forth herein.
2. This matter is **STAYED** until the Florida Supreme Court renders a final order on Petitioner's second postconviction motion pending at Case Number SC18-303.
3. Within **twenty (20) days** of the Florida Supreme Court entering a final order on Petitioner's second postconviction motion, **Respondents** shall notify the Court

and attach a copy of the final Florida Supreme Court order.

4. If **Petitioner** intends on supplementing his Petition with this additional claim, he must file a supplement marked "Second Supplement to Amended Petition Containing Ground(s) ___" within **forty-five (45) days** of the Florida Supreme Court entering a final order. Respondent shall file a response to the supplement within **thirty (30) days** thereafter.

5. The **Clerk of Court** is directed to administratively close this case until further order of Court.

DONE and ORDERED at Fort Myers, Florida, this 2nd day of August 2018.



JOHN E. STEELE
SENIOR UNITED STATES DISTRICT JUDGE

SA: FTMP-1
Copies:
Counsel of Record