

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

STEPHEN V. SMITH,

Petitioner,

v.

Case No: 2:13-cv-813-FtM-38CM

MICHAEL CREWS and FLORIDA  
ATTORNEY GENERAL,

Respondents.

\_\_\_\_\_ /

**OPINION AND ORDER**<sup>1</sup>

This matter comes before the Court on Petitioner Stephen Smith's Motion to Reinstate the Stay ([Doc. #38](#)) filed on June 27, 2017. On October 13, 2016, this Court stayed the instant habeas Petition pending the outcome of Florida Supreme Court decisions regarding the re-sentencing of prisoners sentenced to death prior to the United States Supreme Court's decision in [Hurst v. Florida, 136 S. Ct. 616 \(2016\)](#) (finding that Florida's capital sentencing scheme, under which an advisory jury makes a recommendation to a judge, and the judge makes the critical findings for imposition of a death sentence, violated the Sixth Amendment right to a jury trial). ([Doc. #30](#)).

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On April 21, 2017, the Florida Circuit Court entered a final order granting Petitioner's successive Rule 3.851 motion vacating Petitioner's death sentence and directing a new penalty phase. On June 1, 2017, the stay was lifted, and the parties were directed to advise the Court as to whether the stay should be reinstated. ([Doc. #37](#)). While Petitioner is no longer under a death sentence, no new penalty phase has occurred. Petitioner now moves the Court to reinstate the stay until it is determined whether the State of Florida will pursue the death penalty in a new penalty phase.

The Respondent argues Petitioner's Petition should be dismissed because his death sentence has been vacated and the Petitioner's habeas petition is now moot. ([Doc. #39](#)). However, contrary to Respondent's position, Grounds I, II, III, and IV of the habeas petition concern the Petitioner's guilt phase and not sentencing. Thus, Grounds I, II, III, and IV are not moot at this point and dismissal rather than a stay could cause Petitioner's federal habeas review being lost due to the federal statute of limitations imposed by [28 U.S.C. § 2244\(d\)](#).

In the interests of the parties and of judicial economy, the Court determines that a stay is warranted pending the outcome of the new penalty phase in the Florida Court. The stay will afford the Florida Courts time to reconsider whether to impose a new death sentence or other penalty in Petitioner's case.

Accordingly, it is now

**ORDERED:**

- (1) Petitioner Stephen Smith's Motion to Reinstate Stay ([Doc. #38](#)) is **GRANTED**.
- (2) This case is **STAYED** until **January 1, 2019**, at which time Petitioner may file a new motion to stay if he deems it necessary.

(3) In **NINETY (90) DAYS**, and every ninety days thereafter, both parties shall file a report on the status of the penalty in the Florida Courts so this Court may consider whether to lift or extend the stay.

(4) Petitioner shall inform the Court in writing within **FOURTEEN (14) DAYS** of a new sentence being imposed.

(5) The Clerk of the Court is directed to administratively close the file.

**DONE** and **ORDERED** in Fort Myers, Florida this 16th day of January, 2018.

  
**SHERI POLSTER CHAPPELL**  
**UNITED STATES DISTRICT JUDGE**

Copies:  
Stephen V. Smith  
All Counsel of Record  
SA: FTMP-2