

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
LITTLE ROCK DIVISION**

CAPITAL CASE

MARCEL WILLIAMS

PLAINTIFF

v.

Case No. 5:17-cv-00103 KGB

WENDY KELLEY, et al.

DEFENDANTS

SHOW CAUSE ORDER

Plaintiff Marcel Williams brings this “as applied” challenge under 42 U.S.C. § 1983 and the Eighth Amendment of the United States Constitution to the state of Arkansas’s lethal injection protocol. Mr. Williams argues that if “Arkansas lethal-injection protocol is carried out as written, Mr. Williams in particular, because of his specific medical conditions, will suffer respiratory distress and hypoxia, and he is at serious risk for irreversible organ damage” (Dkt. No. 2, at 11). Mr. Williams claims that “[h]e suffers from multiple health conditions, including diabetes, hypertension, hypertriglyceridemia, hypercholesterolemia, morbid obesity, and sleep apnea.” (*Id.*, at 2). By this action, Mr. Williams seeks “appropriate declaratory relief regarding the unconstitutional acts and practices of Defendants as applied to Mr. Williams” as well as “appropriate permanent equitable relief against all Defendants, permanently enjoining them from conducting an execution by the current lethal-injection protocol with respect to this individual” (*Id.*, at 16).

Mr. Williams and eight other inmates serving on death row in Arkansas brought a “facial” challenge to Arkansas’s lethal injection protocol in a separate action before this Court. *See McGehee v. Hutchinson*, No. 4:17-cv-00179 (E.D. Ark. filed March 27, 2017). In that action, after permitting limited expedited discovery and conducting a four-day evidentiary hearing, the Court

granted plaintiffs' motion for a preliminary injunction, and stayed plaintiffs' executions. On April 17, 2017, the Eighth Circuit Court of Appeals, sitting *en banc*, concluded that the Court abused its discretion in staying the executions and granted the state of Arkansas's motion to vacate the stays. *See McGehee v. Hutchinson*, No. 12-1804, slip op. at *2 (8th Cir. Apr. 17, 2017) (per curiam). In its decision, the Eighth Circuit found that "the prisoners' use of 'piecemeal litigation' and dilatory tactics is sufficient reason by itself to deny a stay." *Id.*, at *3 (quoting *Hill v. McDonough*, 547 U.S. 573, 584-85 (2006)).

In *Hill v. McDonough*, the Supreme Court stated that a court considering a stay of execution must "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.'" *Hill*, 547 U.S. at 584 (quoting *Nelson v. Campbell*, 541 U.S. 637, 650 (2004)). That same equitable standard applies to this as-applied challenge filed separately by Mr. Williams. *See Johnson v. Lombardi*, 809 F.3d 388, 389 (8th Cir. 2015) (reciting the *Hill* standard when denying a motion for stay of execution based on an as-applied challenge to the method of execution). The Court finds that this "strong equitable presumption" weighs against granting Mr. Williams declaratory and injunctive relief in this action.¹

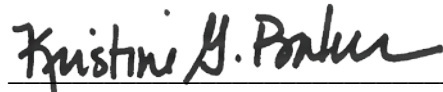
Mr. Williams filed this action on April 11, 2017. His execution is scheduled for April 24, 2017. In his complaint, Mr. Williams states that he was "diagnosed with diabetes on April 24, 2015" and "[o]n April 24, 2015, he was also diagnosed with hypertriglyceridemia and hypercholesterolemia" (Dkt. No. 2, at 6). There is no indication from the face of his complaint or the affidavit of his expert witness, Joel Zivot, M.D., attached to his complaint that Mr. Williams was recently diagnosed with any medical condition that impacts the state's application of its

¹ Mr. Williams' request for relief is, in effect, a motion for a stay of his execution.

current lethal injection protocol. It appears to the Court, at least from the face of his complaint, that Mr. Williams could have brought his claims far in advance of April 11, 2017.

Therefore, the Court enters this show cause order, directing Mr. Williams to show cause on or before Tuesday, April 18, 2017, at 3:00 p.m. why this Court should not find, consistent with the Eighth Circuit's decision in *McGehee*, that this action must be dismissed. At this time, the evidentiary hearing currently scheduled in this matter for April 18, 2017, at 1:00 p.m. will not proceed forward pending further orders of this Court.

So ordered this 18th day of April, 2017.

A handwritten signature in black ink, reading "Kristine G. Baker". The signature is written in a cursive style with a horizontal line underneath it.

Kristine G. Baker
United States District Judge