

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION**

**JOHN BROWN
ADC No. 099474**

PETITIONER

V.

CASE NO: 5:16CV-00381-BRW-JJV

**WENDY KELLEY, Director,
Arkansas Department of Correction**

RESPONDENT

**RESPONDENT'S MOTION FOR A STAY PENDING REVIEW BY THE UNITED
STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT**

Comes now respondent, Wendy Kelley, by and through counsel, Leslie Rutledge, Attorney General, and Kent G. Holt, Assistant Attorney General, and for her motion, states:

1. A jury found petitioner, John Brown, together with two codefendants, Tina Jimerson and Reginald Early, guilty of murder and aggravated robbery for which Brown was sentenced to life imprisonment in Dallas County Circuit Court case number CR CR-90-17. Judgment was entered on August 19, 1992. Brown appealed the judgment, which was affirmed by the Arkansas Supreme Court on January 10, 1994. Brown did not pursue any post-conviction relief in Arkansas state court.

2. On December 21, 2016, Brown filed in this Court a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, alleging that various constitutional violations had been committed by the state prosecution. Although Brown's petition was untimely filed under the one-year statute of limitations set forth in 28 U.S.C. § 2244(d)(1), this Court held in an order entered on August 21, 2018, that "neither Brown nor counsel could have discovered the factual predicates for the majority of his *Brady*, *Giglio*, *Youngblood*, *Napue*, and actual-innocence claims." DN 57, at 6. The Court also found that Brown had proven a colorable claim of actual innocence, *id.* at 10-11, as well as cause and prejudice to excuse his procedural default in state

court. *Id.* at 15. The Court ordered Respondent Kelley, the prison director, within 30 days, to release Brown or institute new criminal proceedings against him. *Id.*

3. Contemporaneously with the filing of this motion, Respondent is filing a notice of appeal from the Court's order of August 21, 2018, vacating Brown's convictions. In service of that appeal, Respondent respectfully requests a stay pursuant to Federal Rule of Appellate Procedure 8(a) of this Court's August 21, 2018, order directing Respondent to release Brown within 30 days or institute new criminal proceedings against him. Respondent meets the requirements for a stay under *Hilton v. Braunskill*, 481 U.S. 770 (1987). For that reason, Respondent respectfully requests that the Court stay its August 21, 2018, order and judgment directing Respondent Kelley to release Brown or bring new criminal proceedings against him. Respondent further requests that the stay remain in effect through the duration of Respondent's appeal to the United States Court of Appeals for the Eighth Circuit.

WHEREFORE, Respondent respectfully requests that this Court grant her motion to stay the Court's order and judgment entered on August 21, 2018.

Respectfully submitted,

LESLIE RUTLEDGE
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ATTORNEYS FOR RESPONDENT

CERTIFICATE OF SERVICE

I, Kent G. Holt, hereby certify that on August 29, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which shall send notification of its filing to counsel for petitioner, Tricia J. Bushnell, Rachel K. Wester, and Erin Cassinelli, who are CM/ECF participants.

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