

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

JOHN BROWN

PETITIONER

VS.

5:16-CV-00381-BRW-JJV

WENDY KELLEY, Director,
Arkansas Department of Correction

RESPONDENT

ORDER

Respondent's Motion for a Stay Pending Review by the United States Court of Appeals for the Eighth Circuit (Doc. No. 60) is DENIED. The Federal Rule of Appellate Procedure governing the "Custody or Release of a Prisoner in a Habeas Corpus Proceeding" reads:

Release Pending Review of Decision Ordering Release. While a decision ordering the release of a prisoner is under review, the prisoner must— unless the court or judge rendering the decision, or the court of appeals, or the Supreme Court, or a judge or justice of either court orders otherwise — be released on personal recognizance, with or without surety.¹

After considering the issues in this case, the presumption for release under Rule 23, and the guidelines set out in *Hilton v. Braunskill*² (all of which lean in Petitioner's favor), there is no reason for Petitioner to remain in custody while Respondent appeals — a process that could take two years. As I set out in the August 21, 2018 Order: "Respondent has thirty days from the entry of this order to release Mr. Brown or institute new criminal proceedings against him."³

IT IS SO ORDERED this 30th day of August, 2018.

/s/ Billy Roy Wilson
UNITED STATES DISTRICT JUDGE

¹Fed. R. App. P. 23(c) (emphasis added).

²481 U.S. 770, 776 (1987) ("See Fed. Rule Civ. Proc. 62(c); Fed. Rule App. Proc. 8(a). Under both Rules, however, the factors regulating the issuance of a stay are generally the same: (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.").

³Doc. No. 57.