


UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

FILED

AUG - 2 2006

CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY  DEPUTY CLERK

DARLIE LYNN ROUTIER, §
TDCJ No. 999220, §

Petitioner, §

V. §

CIVIL NO. SA-05-CA-1156-RF

NATHANIEL QUARTERMAN, Director, §
Texas Department of Criminal §
Justice, Correctional §
Institutions Division, §

Respondent. §

ORDER GRANTING PETITIONER'S MOTIONS FOR RECONSIDERATION
AND FOR STAY AND ABEYANCE

The matters before the Court are (1) petitioner's motion for reconsideration of this court's previous denial of petitioner's motion for stay and abeyance, filed April 25, 2006, docket entry no. 19, (2) petitioner's motion for stay and abeyance, filed February 13, 2006, docket entry no. 13, and (3) the status of this case.

In an Order issued March 2, 2006, docket entry no. 14, this Court denied petitioner's motion for a stay, pointing out that petitioner had failed to allege with specificity precisely how the untested DNA evidence petitioner was then seeking to have scientifically examined related to petitioner's claims for federal habeas relief herein.

On April 25, 2006, petitioner filed a motion for reconsideration of this Court's denial without prejudice of

petitioner's motion for stay seeking to hold this cause in abeyance pending the disposition of state court proceedings designed to enable petitioner to obtain modern DNA testing of certain evidence relevant to petitioner's claims for federal habeas corpus relief in this cause. Petitioner's motion for reconsideration sets out in detail the factual basis for petitioner's request that this cause be held in abeyance pending the resolution of petitioner's currently pending state court proceedings.

Petitioner has identified with specificity numerous items of evidence which petitioner argues should be subjected to current methods of DNA testing because those items may very well contain exculpatory or mitigating evidence relevant to petitioner's capital murder conviction. Respondent has not taken issue with the petitioner's analysis of the potentially material nature of the DNA tests currently being sought in state court by petitioner. Rather, respondent simply argues this federal habeas corpus proceeding is not the appropriate forum in which to litigate what could prove to be substantial claims of actual innocence.

In its recent opinion in *House v. Bell* ___ U.S. ___, 126 S.Ct. 2064, ___ L.Ed.2d ___ (2006), the Supreme Court made clear that the burden on a federal habeas petitioner attempting to establish "actual innocence" for purposes of circumventing the procedural default doctrine does not require absolute certainty about the petitioner's guilt or innocence. *House v. Bell*, ___ U.S. at ___,

126 S.Ct. at 2076. Rather, that standard is satisfied when the petitioner shows it is more likely than not that any reasonable juror would have reasonable doubt as to the petitioner's guilt. *Id.* This is not a sufficiency of the evidence test. *House v. Bell*, ___ U.S. at ___, 126 S.Ct. at 2077. Given the unchallenged representations of petitioner concerning the potentially exculpatory and mitigating nature of DNA test results on the items in question, it appears clear to this Court that, at some point, the evidence in question will be properly tested.

It seems egregiously inefficient for this Court to proceed to address the merits of petitioner's claims for federal habeas relief herein without the advantage of knowing whether substantial additional exculpatory or mitigating evidence existed at the time of petitioner's trial, whether the prosecution withheld potentially mitigating or exculpatory evidence from petitioner's trial counsel, and whether petitioner's trial counsel rendered ineffective assistance by failing to adequately investigate and obtain proper DNA testing of available evidence. None of these three issues can be definitively resolved unless and until all of the available organic material identified in petitioner's motion for reconsideration are subjected to the latest methods of identification testing or determined to be unavailable for such testing. Likewise, in view of the Supreme Court's holding in *House*, it now appears inevitable that proper DNA testing on the

evidence in question will be necessary before the State of Texas will be permitted to execute petitioner.

Respondent's pleadings herein do not indicate whether the state court in which petitioner's request for DNA testing has been pending for almost three years has made any formal statement as to precisely when, if ever, it intends to rule on petitioner's request for DNA testing. Given the clear relevance of the requested DNA tests results to the issues currently pending in this cause, particularly with regard to petitioner's *Brady*, ineffective assistance, and actual innocence claims, this Court will grant petitioner's motion for reconsideration, grant petitioner's motion for stay, and hold this case in abeyance until such time as the courts of the State of Texas render a final judgment on petitioner's request for DNA testing of the potentially exculpatory and mitigating evidence identified in petitioner's motion for reconsideration.

Accordingly, it is hereby **ORDERED** that:

1. Petitioner's motion for reconsideration of this Court's denial of petitioner's request for stay, filed April 25, 2006, docket entry no. 19. is **GRANTED**.


2. This Court's Order issued March 2, 2006, docket entry no. 14, is **VACATED**.

3. Petitioner's motion for stay and abeyance, filed February 13, 2006, docket entry no. 13, is **GRANTED AS SET FORTH HEREINAFTER**.

4. Pending further Order of this Court all proceedings in this cause shall be **STAYED** and held in **ABEYANCE** until such time as the courts of the State of Texas have rendered a final judgment on petitioner's request for DNA testing of the evidence identified in petitioner's motion for reconsideration.

5. Petitioner's current federal habeas corpus counsel is directed to monitor petitioner's state court proceeding seeking DNA testing and to advise this Court in writing immediately upon the rendition of a final decision on petitioner's request for DNA testing.

SIGNED AND ENTERED this 2nd day of August, 2006, at San Antonio, Texas.



ROYAL FURGESON
United States District Judge