IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 17-14612-P

CAREY DALE GRAYSON, 2:12-cv-00316

Plaintiff,

versus

WARDEN,
COMMISSIONER, ALABAMA DOC,

Defendants,

2:13-cv-781, et al

DEMETRIUS FRAZIER, et al,

Consol Plaintiffs,

versus

WARDEN,
COMMISSIONER, ALABAMA DOC,

Defendants,

2:16-cv-270

TORREY TWANE MCNABB,

Consol Plaintiff - Appellee -
Cross Appellant,

versus

WARDEN,
COMMISSIONER, ALABAMA DOC,

Defendants - Appellants -
Cross Appellees,

2:14-cv-1028

CHRISTOPHER BROOKS,

Intrvenor Plaintiff,

versus

WARDEN,
COMMISSIONER, ALABAMA DOC,

Defendants.

Appeal from the United States District Court
for the Middle District of Alabama

Before: TJOFLAT, ROSENBAUM and JILL PRYOR, Circuit Judges.

BY THE COURT:

In *Burton et al. v. Warden, Commissioner, Alabama Department of Corrections*, we reversed the district court's grant of the Alabama Department of Correction's ("ADOC") Federal Rule of Civil Procedure Rule 12(b)(6) motion to dismiss Torrey Twane McNabb's complaint, which challenges under the Eighth Amendment Alabama's current method of execution via lethal injection, and remanded the case to the District Court for further proceedings. No. 17-11536, __

F.3d __, 2017 WL 3916984, at *1 (11th Cir. Sept. 6, 2017). After we announced our decision in *Burton* but before our mandate issued, the Alabama Supreme Court scheduled McNabb's execution for October 19, 2017. Our mandate issued on October 5. Once the case returned to the District Court, McNabb moved the District Court pursuant to the All Writs Act, 28 U.S.C. § 1651, to enjoin his execution in order to allow his case to go forward. Finding the equities lay in McNabb's favor, the District Court enjoined his execution in order to protect its jurisdiction to try the case.

The ADOC has appealed the injunction. We have jurisdiction. 28 U.S.C. § 1292(a)(1). Contemporaneously, the ADOC has moved this court to vacate the injunction. Although the motion is styled as an "emergency motion to vacate [the] stay of execution," since the District Court issued the injunction under the All Writs Act and did not issue a stay based on the merits of McNabb's claim, we construe the motion as a motion for summary disposition—that is, we should decide the appeal without further briefing. *See Groendyke Transport, Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969) (explaining that summary disposition of a case is proper in "cases where time is truly of the essence" and cases "in which the position of one of the parties is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case").

We note that the Supreme Court has vacated our prior All Writs Act injunctions in two previous method-of-execution cases: the cases of Robert Melson and Jeffery Borden. *See* Order in Pending Case, *Dunn, Comm'r, Al DOC, et al. v. Borden, Jeffrey L.*, 583 U.S. 17A360 (2017); Order in Pending Case, *Dunn, Comm'r, Al DOC, et al. v. Melson, Robert B.*, 581 U.S. 16A1200 (2017). We certainly do not take those decisions lightly. But these vacaturs occurred without discussion, leaving unclear the Court's reasoning behind them. We assume that the Court's decisions were based on deficiencies in the reasons we gave for issuing those specific injunctions, and not with longstanding All Writs Act case law, which "empowers federal courts to issue injunctions to protect or effectuate their judgments."[1] *Wesch v. Folsom*, 6 F.3d 1465, 1470 (11th Cir. 1993); *Teas v. Twentieth Century Fox Film Corp.*, 413 F.2d 1263, 1266 (5th Cir. 1969) (noting that the All Writs Act authorizes a court to "effectuate its judgments and to prevent any interference with it"); *see also United States v. New York Tel. Co.*, 434 U.S. 159, 172 (1977) ("This Court has repeatedly recognized the power of a federal court to issue such commands under the All Writs Act as may be necessary or

[1] Regarding the injunction we issued in *Melson*, we did not explain in detail our reasoning under the All Writs Act justifying our entry of injunction. With regard to our injunction in *Borden*, we enjoined the execution to ensure that the District Court could receive our mandate and proceed accordingly. We construe the Court's vacatur of that injunction as an indication that an appellate court may not issue an All Writs injunction when the power to effect its mandate does not lie with the appellate court but rather with the district court. Unlike the injunctions in those cases, the injunction now before us was issued by the District Court for the purpose of protecting its own existing jurisdiction to carry out our mandate on remand.

appropriate to effectuate and prevent the frustration of orders it has previously issued in its exercise of jurisdiction otherwise obtained."). We have also noted that the All Writs Act gives federal courts the power to "safeguard not only ongoing proceedings, but potential future proceedings, as well as already-issued orders and judgments." *Klay v. United Healthgroup, Inc.*, 376 F.3d 1092, 1100 (11th Cir. 2004). The District Court relied on this authority in entering the injunction before us.

We review the District Court's issuance of the injunction for abuse of discretion. *Klay*, 376 F.3d at 1096. "A district court abuses its discretion if it applies an incorrect legal standard, follows improper procedures in making the determination, or makes findings of fact that are clearly erroneous." *Martin v. Automobili Lamborghini Exclusive, Inc.*, 307 F.3d 1332, 1336 (11th Cir. 2002).

Here, the District Court applied the correct legal standard. An applicant for an All Writs Act injunction "must simply point to some ongoing proceeding, or some past order or judgment, the integrity of which is being threatened by someone else's action or behavior." *Klay*, 376 F.3d at 1099–1100.[2] The applicant

[2] "The requirements for a traditional injunction," such as a showing of a substantial likelihood of success on the merits of a claim, "do not apply to injunctions under the All Writs Act." *Klay*, 376 F.3d at 1100. Rather, the Act permits a court to "compel acts necessary to . . . facilitate the court's effort to manage the case to judgment" without respect to the merits of the case proceeding to judgment. *Id.* at 1102 (internal quotation marks omitted).

must also show that the equities lie in his favor. *See Hill v. McDonough (Hill II)*, 464 F.3d 1256, 1259 (11th Cir. 2006), *cert. denied*, 549 U.S. 987 (2006).

The District Court considered both of these requirements: it pointed to McNabb's revived suit and concluded "that the equities, in this emergency setting and in view of the issues to be resolved, favor McNabb." Specifically, the Court agreed with this Court's observation that "the present exigency is not due to McNabb's actions or lack thereof." Thus, it proceeded "without the strong equitable presumption against entry of a stay because inexcusable delay is not attributable to McNabb." The Court noted further that "[t]here is insufficient time prior to October 19 to address deliberatively the full panoply of weighty, life-involved issues presented." It observed that "because the prejudice to McNabb—his execution—is so great, the equities strongly outweigh the State's interest in executing McNabb as scheduled . . . ." Finally, the Court explained that "while the State and victims have, as always, a strong interest in seeing the State's judgments executed, the State has no protectable interest—nor does the public—in an unconstitutional execution."

The ADOC points to *Hill v. McDonough (Hill I)*, 547 U.S. 573, 584 (2006), for the proposition that "inmates seeking time to challenge the manner in which the State plans to execute them must satisfy all of the requirements for a stay, *including a showing of a significant possibility of success on the merits*."

Appellant's Br. at 1 (Appellant's emphasis). For starters, the quoted language omits the prefatory phrase "like all other stay applicants," *Hill I*, 547 U.S. at 584, a qualification indicating that the *Hill I* Court's prescription applies specifically to traditional stays. But the District Court here noted that McNabb moved both for a traditional stay *and* for an injunction under the All Writs Act, concluding that his motion for the former failed while his motion for the latter succeeded. The two kinds of relief he sought are distinct. *See Nken v. Holder*, 556 U.S. 418, 428 (2009) (defining an "injunction" as "a means by which a court tells someone what to do or not to do," and a "stay" as "halting or postponing some portion of [a] proceeding, or . . . temporarily divesting an order of enforceability"). McNabb in essence asked the District Court either to order Alabama to refrain from executing him on October 19, 2017, as scheduled, or, alternatively, to divest the Alabama Supreme Court of its warrant authorizing his execution on that date. The District Court did the former but not the latter, although we recognize that functionally, in this particular context, the result may be the same. Indeed, in *Hill II*—decided after the Supreme Court's decision in *Hill I*—we recognized that we "clearly" have authority under the All Writs Act to enjoin an inmate's execution, but declined to do so based on the equities in that case. *Hill I*, 464 F.3d at 1258-59. *See also Diaz v. McDonough*, 472 F.3d 849, 850-51 (11th Cir. 2006), *cert. denied*, 549 U.S. 1103

(2006) (interpreting inmate's self-described "motion . . . for a stay of execution" as All Writs Act injunction motion, but denying it on the equities).

The All Writs Act, as we understand it, gave the District Court authority to do what it did here, just as it would confer authority to issue any number of other writs "necessary or appropriate to effectuate and prevent the frustration of orders [the court] has previously issued in its exercise of jurisdiction otherwise obtained." *See New York Tel.*, 434 U.S. at 172. The Act comes with limitations under different circumstances, but those limitations depend on what the issuing court is attempting to achieve. *See, e.g.*, *United States v. Blake*, 868 F.3d 960, 970-71 (11th Cir. 2017) (concluding All Writs Act requires a court to meet five conditions before compelling third-party assistance in a criminal investigation). *Cf. Penn Bureau of Corr. v. United States Marshals Serv.*, 474 U.S. 34, 43 (1985) (concluding All Writs Act might justify ordering Marshals to transport a prisoner under "exceptional circumstances in which a district court can show clearly the inadequacy of traditional habeas corpus writs"). A court's authority, while limited, is not and cannot be conditional upon showings by the parties. Otherwise courts would be disarmed from issuing the very orders the All Writs Act authorizes, effectively reducing the statute to a nullity.

The District Court also did not follow improper procedures or make clearly erroneous factual findings. Rather, it concluded "[i]t would be impracticable, more

accurately, impossible, to give due consideration to and resolve the merits of McNabb's action prior to his October 19 execution date, given the extensive directives and mandates the Eleventh Circuit has issued . . . ." This determination was made pursuant to the correct legal standard and in view of the peculiar exigencies of this case.

We therefore find no cause for summarily reversing the District Court's All Writs Act injunction and deny the emergency relief the ADOC seeks.

SO ORDERED.