

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
FIFTH DIVISION

STACEY JOHNSON,
JASON MCGEHEE,
BRUCE WARD,
TERRICK NOONER,
JACK JONES,
MARCEL WILLIAMS,
KENNETH WILLIAMS,
DON DAVIS &
LEDELL LEE

PLAINTIFFS

v.

60CV-15-2921

WENDY KELLEY, in her official capacity as
Director, Arkansas Department of
Correction, and
ARKANSAS DEPARTMENT OF
CORRECTION

DEFENDANTS

TEMPORARY RESTRAINING ORDER

This Order operates to stay Plaintiffs' executions pending a preliminary
injunction hearing.

Plaintiffs are prisoners on death row in the Arkansas Department of Corrections
(hereinafter "ADC"). Plaintiffs' execution dates, set by the Governor of Arkansas, are as
follows:

| <u>Name</u> | <u>Date of Execution</u> |
|--------------------|---------------------------------|
| Lee, Ledell | unknown |
| Davis, Don | 10/21/15 |
| Ward, Bruce | 10/21/15 |
| Johnson, Stacey | 11/03/15 |
| Nooner, Terrick | 11/03/15 |
| Jones, Jack | 12/14/15 |
| Williams, Marcell | 12/14/15 |
| Williams, Kenneth | 01/14/16 |
| McGehee, Jason | 01/14/16 |

Plaintiffs brought this action on June 29, 2015 (Amended Complaint filed on September 28, 2015). Plaintiffs seek equitable relief against Defendants, challenging, as unconstitutional, Arkansas Act 1096 of 2015 (hereinafter the "Method of Execution Statute"). Plaintiffs also challenge the lethal injection protocol adopted by the ADC pursuant to the Method of Execution Statute. Defendants filed a Motion to Dismiss on October 5, 2015.

Plaintiffs argue that the Method of Execution Statute and the ADC's execution protocol are unconstitutional, and violate (a) Art. II, § 17 of the Arkansas Constitution, (the contracts clause); (b) Art. II, § 6 of the Arkansas Constitution, (liberty of the press and of speech); (c) Art. II, § 9 of the Arkansas Constitution, (procedural violation of ban on cruel or unusual punishment); (d) Art. II, § 8 of the Arkansas Constitution, (due process); (e) Art. IV of the Arkansas Constitution, (separation of powers); (f) Art. II § 9 of the Arkansas Constitution, (substantive violation of ban on cruel or unusual punishment); (g) Art. II, § 17 of the Arkansas Constitution, (ex post facto laws); and (h) Art. XIX, § 12 of the Arkansas Constitution, (receipts and expenditures to be published). Plaintiffs seek a permanent injunction forbidding the ADC from executing them under the Method of Execution Statute and its current lethal injection procedure.

On October 9, 2015, the Court granted in part, denied in part Defendants' Motion to Dismiss. The Court hereby finds that immediate and irreparable injury will result to Plaintiffs absent a temporary restraining order enjoining Defendants from executing Plaintiffs as scheduled. Plaintiffs Don Davis and Bruce Ward are set to be executed as early as October 21, 2015, less than two weeks from this date. The other Plaintiffs are set to be executed in the following weeks. This action is Plaintiffs' only legal remedy by

which they can challenge the Method of Execution Statute and execution protocol that will effectuate their deaths. Proceeding with Plaintiffs' executions as scheduled, without allowing parties adequate time to conduct discovery, respond to all outstanding claims and motions, and proceed to a trial on the merits on Plaintiffs' challenges to the Method of Execution Statute and the ADC's execution protocol, will rob Plaintiffs of an opportunity to litigate their rights under the Arkansas Constitution.

For reasons stated herein, Plaintiffs' executions are stayed pending a preliminary injunction hearing. This restraining order is binding upon Wendy Kelley, in her official capacity as Director of the ADC, the ADC, as well as Defendants' officers, agents, assigns, servants, employees, attorneys and any other persons who are in active concert or participation with Defendants and Defendants' officers, agents, servants, employees and attorneys. Disobedience of this restraining order will be punished by the Court as contempt.

ORDERED THIS 9th day of October, 2015


CIRCUIT JUDGE