

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF ARIZONA

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4 Joseph Rudolph Wood III, et)
 al.,)
 5) No. CV 14-1447-PHX-NVW
 Plaintiffs,)
 6 vs.)
)
 7 Charles L. Ryan, et al.,) Phoenix, Arizona
) July 23, 2014
) 3:27 p.m.
 8)
 Defendants.)
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11 BEFORE: THE HONORABLE NEIL V. WAKE, JUDGE

12 (*Telephonic Motion for Emergency Stay of Execution*)

13 (*REDACTED*)

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20 Official Court Reporter:

21 Laurie A. Adams, RMR, CRR

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24 Proceedings Reported by Stenographic Court Reporter

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1 P R O C E E D I N G S

2 THE COURT: Ms. Konrad.

3 MS. KONRAD: I just filed a Motion for Emergency Stay
4 of Execution. Mr. Wood's execution started at 1:52. He was
5 being sedated at 1:57. Since that time he has been gasping,
6 snorting, and unable to breathe and not dying. And we're
7 asking -- our motion asks for you to issue an emergency stay
8 and order the Department of Corrections to start lifesaving
9 techniques as required under their protocol.

15:27:50

15:28:11

10 THE COURT: Do you have an Assistant Attorney General
11 there?

12 MS. KONRAD: I do not. I'm in the office right now.

13 THE COURT: Okay. I have been pulled out of a
14 meeting. We will do everything we can to deal with this with
15 the urgency and demands. And I have a court reporter here. We
16 are on the record.

15:28:26

17 I want to make attempt right now to obtain
18 participation of an attorney for the State. Who would that be?

19 I mean --

20 MS. KONRAD: Jeff Zick.

15:28:44

21 THE COURT: Do you have any -- do you have numbers for
22 any of these people? The reality is we'll take anybody I can
23 reach, but we should start with the most appropriate person.
24 It seems like Mr. Zick.

25 MS. KONRAD: Let me -- just a second, Judge Wake.

15:28:58

1 THE LAW CLERK: I have got a number.

2 THE COURT: Ms. Konrad.

3 THE LAW CLERK: The work number is 602-542 --

4 MS. KONRAD Judge Wake?

5 THE COURT: Yes. 15:29:28

6 MS. KONRAD: 542-5025 is the main Number.

7 THE LAW CLERK: 8594 is his direct number.

8 THE COURT: We have 8594 as his direct number.

9 MS. KONRAD: Yes. That is Jeff Zick's direct number.

10 THE COURT: Now, I must tell you, I don't know how to 15:29:44

11 do conference calling on my phone. Are you able to do it on

12 your end?

13 MS. KONRAD: Yes. I will attempt to conference him

14 in.

15 THE COURT: What's the best way -- my staff here knows 15:29:53

16 how to do it. So why don't we try to do it on my end.

17 MS. KONRAD: Okay.

18 THE COURT: Go ahead.

19 MS. KONRAD: Okay.

20 THE COURT: Ms. Konrad, do you have the numbers and 15:30:05

21 names for any backup people? Because I probably won't have you

22 on as I'm reaching them.

23 MS. KONRAD: Sure. A backup number is Jeff Sparks.

24 Mr. Sparks is also on the case. Mr. Sparks is 548-7670.

25 THE COURT: Now -- 15:30:24

1 MS. KONRAD: Also let me give you the cell phone
2 number for Mr. Zick.

3 THE COURT: Yes.

4 MS. KONRAD: It's [REDACTED].

5 THE COURT: All right. And in case I lose you, what's 15:30:36
6 the number to call you back?

7 MS. KONRAD: [REDACTED].

8 THE COURT: All right. Please hold and we'll try.

9 MS. KONRAD: Okay. Thank you, Judge.

10 Ms. Konrad, we're going to try another number. 15:31:37

11 MS. KONRAD: Okay. Thank you.

12 MR. ZICK: Hello?

13 THE COURT: Mr. Zick?

14 MR. ZICK: Yes.

15 THE COURT: This is Judge Wake calling. 15:32:03

16 MR. ZICK: Hi, Judge Wake.

17 THE COURT: I need to put you on a conference call
18 with Robin Konrad.

19 MR. ZICK: I'm sorry. Let me step out of my office.
20 I had the director on the line. I can step out of my office. 15:32:14

21 THE COURT: Hold on a minute.

22 Ms. Konrad, are you there?

23 MS. KONRAD: I am.

24 THE COURT: I just reached Mr. Zick on his cell phone.
25 He is stepping out because he was speaking to the director at 15:32:24

1 this moment. Hold on a minute until I get him back.

2 MR. ZICK: I'm here.

3 THE COURT: Mr. Zick, Ms. Konrad has advised me that
4 Mr. Wood has not yet expired, and this has been going on for,
5 what, nearly an hour and a half. 15:32:43

6 And Ms. Konrad, I'm going to ask you to state very
7 succinctly the motion you filed and the relief you are seeking,
8 and then I'm going to invite you, Mr. Zick, to tell us
9 everything that is relevant to this that, of course, I will
10 need to hear from you. 15:32:59

11 Go ahead, Ms. Konrad.

12 MS. KONRAD: According to the attorney who is
13 witnessing, Mr. Wood -- the execution started at 1:52 p.m. At
14 1:57 p.m., the Department of Corrections reported that he was
15 sedated but at 2:02 he began to breathe. At 2:03 his mouth 15:33:15
16 moved, and since that time Mr. Wood has continued to breathe.
17 He has been gasping and snorting for over an hour. And in our
18 motion, we are respectfully requesting that the Court stop the
19 execution and require the Department of Corrections to use the
20 lifesaving provisions required in its protocol. 15:33:34

21 THE COURT: Mr. Zick, I invite you to tell me the
22 facts as you know them. And that would include the details of
23 what the protocol provides for this situation.

24 Go ahead, Mr. Zick.

25 MR. ZICK: Okay. What I can tell you that I know from 15:33:46

1 speaking with Dawn Northup, who is general counsel with the
2 Department of Corrections, and with the director, is that the
3 consciousness check, according to -- that complies with the
4 protocol that had taken place, the individual who does the
5 consciousness check determined, medically determined that Mr.
6 Wood was unconscious; that his mouth was open; that at some
7 point during the -- when the drugs were given, an involuntary
8 reaction or a snoring-type reaction was taking place; that it
9 had been ongoing. A second consciousness check was given. He
10 is unconscious --

15:34:06

15:34:34

11 THE COURT: Mr. Zick, I appreciate the need to address
12 this as quickly as possible, but could you please give me, to
13 the extent you know, the time frames of these steps that you
14 have articulated, the second consciousness check?

15 MR. ZICK: I don't have the exact time frame of the
16 second consciousness check.

15:34:48

17 THE COURT: Very well then. Just please continue with
18 what you know.

19 MR. ZICK: Okay. And so that involuntary reaction,
20 according to the medical individual who was doing the
21 consciousness check, indicated that that was something that is
22 going to occur. A second dose of drugs was given, and I don't
23 have the time frame for that. They didn't give me that
24 information. That involuntary reaction continues, but I am
25 told that Mr. Wood is effectively brain dead and that this is

15:35:01

15:35:26

1 the type of reaction that one gets if they were taken off of
2 life support. The brain stem is working but there's no brain
3 activity.

4 THE COURT: And tell me briefly how it is, is he -- do
5 you have the leads or probes necessary to determine his brain
6 state? 15:35:50

7 MR. ZICK: Repeat that, Judge. I'm sorry.

8 THE COURT: Do you have the leads connected to
9 determine his brain state?

10 MR. ZICK: That, I don't -- I don't believe there are 15:36:03
11 leads connected on the head, but I'm not sure. I know that
12 this individual is medically trained.

13 THE COURT: Okay. What I'm wondering is what the
14 basis is for the conclusion that he is effectively brain dead.

15 MR. ZICK: It's because of the medical training. And 15:36:17
16 all I know is that's the information that was given to me. I
17 could certainly find that out.

18 THE COURT: Well, if there are not monitors connected
19 with him, if it's just a visual observation, that is very
20 concerning as not being adequate. 15:36:34

21 Tell me, what is the current status and what is the
22 anticipated plan of action from this minute forward?

23 MR. ZICK: Well, from this minute forward, I can tell
24 you that the director is on the phone with the governor's
25 office. The only contingency plan for this is in the protocol. 15:36:55

1 I think it's cited in the motion that was filed.

2 THE COURT: I have not been able to read the motion
3 because I have just called you immediately. So please tell me
4 what the protocol provides in that respect.

5 MR. ZICK: If I could step back into my office. 15:37:12

6 THE COURT: Certainly.

7 MS. KONRAD: I can read you the motion, Judge.

8 THE COURT: Let's do that. Mr. Zick, hold on and
9 we'll hear this from Ms. Konrad.

10 MS. KONRAD: The contingency procedure is an Automatic 15:37:25
11 External Defibrillator will be readily available on site. In
12 the event of cardiac arrest, trained medical personnel and
13 emergency transportation shall be available in proximity to
14 respond to the inmate should any medical emergency arise. If
15 at any point the team member determines any part of the 15:37:43
16 execution is not going according to procedure, they shall
17 advise the IV team leader who notifies the director, and the
18 director will determine the appropriate procedures and stand
19 down if necessary.

20 THE COURT: Mr. Zick, do you dispute her summary 15:37:57
21 there?

22 MR. ZICK: That is the contingency plan that is listed
23 in the protocol, correct. Yes.

24 THE COURT: And so at this point, he's still
25 breathing, but you believe -- 15:38:08

1 MR. ZICK: He is.

2 THE COURT: You believe from visual observations that
3 he is brain dead, correct?

4 MR. ZICK: It is an involuntary snoring that is
5 apparently a reaction of the brain stem and not of the brain. 15:38:19

6 THE COURT: Are there -- what are the indications as
7 to whether -- well, I understand you have already answered
8 that.

9 Now, you were just talking with the director. Are you
10 able to tell me what the director anticipates doing at this 15:38:36
11 moment? And please remind me of what the governor's role is
12 under the protocol.

13 MR. ZICK: I'm not sure what the governor's role is
14 under the protocol, and I don't have the protocol in front of
15 me. All I know is that the governor's office received a call 15:38:54
16 from Julie Hall and then called the director. And the
17 direct -- Dawn Northup was on the phone with me when the
18 director received that call. I don't know -- I can't tell you
19 what the minute plan is right now.

20 THE COURT: All right. And Ms. Konrad, are you -- 15:39:13

21 MR. ZICK: I'm sorry, Judge, if I may.

22 THE COURT: Go ahead.

23 MR. ZICK: I just received a note that said that Mr.
24 Wood stopped the snoring and involuntary action and the heart
25 has slowed considerably. So that's the updated information to 15:39:30

1 the minute that I have.

2 THE COURT: Now, before I get to some substance here,
3 more substance, Ms. Konrad, I don't recall from my previous
4 studies of protocols that may be out of date that the governor
5 has any role. Is that correct? 15:39:48

6 MS. KONRAD: Can you repeat that, Judge? I'm sorry.

7 THE COURT: I'm saying I don't recall from my previous
8 examinations of protocols, which may be out of date now, that I
9 don't recall that the governor has any role. Does the governor
10 have any role? 15:40:04

11 MS. KONRAD: Off the top of my head, it's not -- I
12 don't recall the governor having any role written in the
13 protocol, either. Of course, as the governor of this state she
14 could stop the execution, I assume.

15 THE COURT: I would assume -- go ahead, Mr. Zick. 15:40:16

16 MR. ZICK: Judge, I do recall the only -- the role of
17 the governor that I recall in the protocol is simply calling to
18 ensure that there are no stays of execution prior to the
19 commencement of the execution.

20 THE COURT: All right. Now, of course I am 15:40:31
21 considering right now based on what's presented to me whether
22 the execution should be suspended, but I am also -- it would be
23 most helpful to know what the director intends to do
24 immediately.

25 I am also very concerned, Ms. Konrad, that depending 15:40:49

1 on the accuracy of the information Mr. Zick has passed on that
2 suspending the execution may do more harm than good.

3 Mr. Zick, what can you do very promptly to advise me
4 of the director's intentions? And if that means doing a quick
5 call while we wait for three or five minutes, we'll do that. 15:41:17
6 But I do intend to resolve this matter with extreme urgency in
7 light of the nature of the matter and the inability to
8 deliberate at any length.

9 So Mr. Zick, are you able -- what do you suggest in
10 terms of getting us the most accurate information about the 15:41:40
11 director's intention?

12 MR. ZICK: I can go back into my office and if he's
13 still on the phone I can talk with him, or I can give him an
14 immediate call.

15 THE COURT: Ms. Konrad, do you have any problem 15:41:53
16 proceeding that way? I would expect we would be back in
17 contact within 5 or 10 minutes.

18 MS. KONRAD: You can reach me at this same number,
19 Judge Wake.

20 THE COURT: I might prefer just to remain on the line 15:42:05
21 and not have to reestablish the connection and allow Mr. Zick
22 to make that call to the director, and I expect that his call
23 will be taken.

24 MS. KONRAD: That would be perfect.

25 THE COURT: We will remain on the line, then, and Mr. 15:42:20

1 Zick, please do that. And again, I do need to make a decision
2 within a few minutes as to whether to suspend the execution.
3 So go ahead, Mr. Zick.

4 MR. ZICK: Okay. I will do that. Thank you.

5 THE COURT: All right. 15:42:34

6 Ms. Konrad, I don't want to lose the phone connection,
7 but I'm going to put you on mute so that I can converse with my
8 staff.

9 MS. KONRAD: That's perfectly okay, Judge Wake. Thank
10 you. 15:42:52

11 THE COURT: We're going to do that right now. And
12 please hold however long it is. Thank you.

13 MS. KONRAD: Okay.

14 THE COURT: We're going to go off the record while
15 we're off the phone. 15:43:01

16 (Discussion off the record from 3:43 p.m. until 3:47
17 p.m.)

18 MS. KONRAD: Judge Wake put us on mute.

19 THE COURT: I have you both. Go ahead, Mr. Zick.

20 MR. ZICK: Okay. The updated information, before I 15:47:50
21 get to any contingency, is that Mr. Wood has no respiration
22 right now and his heart rate is 20 and falling. That's on the
23 medical side.

24 The director indicated that in consultation with the
25 IV team leader, who is a medical doctor, Mr. Wood is apparently 15:48:10

1 comatose; that he cannot change course at this point, and the
2 plan, I suppose, is to push chemicals based on the input from
3 the IV team leader.

4 THE COURT: Increase the chemical dosage?

5 MR. ZICK: Right. 15:48:37

6 THE COURT: Do we have -- do you have a sense of what
7 the risk, the chances are of pain at this time?

8 MR. ZICK: In talking with the director, who has been
9 in consultation with the IV team leader, there has been no
10 appearance of any pain. 15:48:57

11 THE COURT: And with respect to the gasping and
12 attempted breathing that Ms. Konrad reported initially, that,
13 of course, could be indicative of pain. But your report is
14 that is now done, is that correct, that --

15 MR. ZICK: There's no respiration. 15:49:14

16 THE COURT: Ms. Konrad, I'm trying to lead this
17 discussion in a way that gets to the decisions I have to make,
18 and I have not been meaning to exclude anyone. I invite you to
19 tell me what you request. And I just got your paper, and I
20 have read it. I invite you to tell me what it is that you ask 15:49:33
21 of the Court and briefly your basis. And again, my principal
22 focus here is on the chance of pain.

23 Go ahead, Ms. Konrad.

24 MS. KONRAD: Judge Wake, when we filed this motion 45
25 minutes ago when we got word he was gasping for over an hour, 15:49:52

1 our request was to immediately stay the execution and perform
2 lifesaving techniques. I'm not a medical professional. I
3 would still -- Mr. Zick has said the situation has changed.
4 Without any further information, I'm not sure what more to say
5 other than we're requesting the stay of execution. I'm not
6 sure if that's possible at this time.

15:50:18

7 THE COURT: I understand.

8 Mr. Zick, do you want to be heard briefly in response
9 to that statement? You don't have to say anything more.

10 MR. ZICK: I don't have anything other than the
11 information I just gave.

15:50:36

12 THE COURT: All right. First of all, I thank both
13 counsel. Ms. Konrad, I thank you for the urgency with which
14 you have addressed all this, and Mr. Zick, I thank you for the
15 luck that you are available and your prompt responses to my
16 questions.

15:50:51

17 Looking at this from the perspective of Eighth
18 Amendment prohibition of cruel and unusual punishment, I look
19 at this in terms of what can be done, if anything, to eliminate
20 or reduce pain that may be experienced. It's a matter of
21 degrees of risk with less than certain knowledge.

15:51:09

22 Based on Mr. Zick's summary, it does appear to me that
23 there is no serious risk of pain being experienced at this
24 time. Now, maybe I should qualify that, that there -- we have
25 to deal with degrees of uncertainty, but it does not appear

15:51:37

1 that with lack of physical reaction that there is pain.

2 I am also concerned that if it were possible to
3 suspend this in a better circumstance, I would be disposed to
4 do that if it did not create even more risk of pain. It is not
5 appearing to me that that is a realistic possibility at this 15:52:02
6 time. So -- and I summarize Mr. Zick, and I'm relying on --
7 and I do appreciate your presentation and information you have
8 gathered that he has no physical response, is not breathing,
9 that the heart rate is dropping.

10 And again, I want to confirm, the heart rate is 15:52:30
11 dropping. It's not stable at a low rate, but it is dropping.
12 Is that your understanding, Mr. Zick?

13 MR. ZICK: That's my understanding. When the motion
14 was filed, I believe his heart rate was above 20, but I can't
15 verify that. All I know is that I was told his heart rate was 15:52:49
16 20 when I called the director based on the Court's wish.

17 Wait. I just -- I'm sorry, Judge.

18 THE COURT: Go ahead.

19 MR. ZICK: I just learned that the IV team leader has
20 confirmed Mr. Wood's death. 15:53:07

21 THE COURT: All right. Let me finish my thought,
22 because it's my responsibility.

23 Counsel, I have addressed this with utmost urgency,
24 everything that's humanly possible to respond to Ms. Konrad's
25 motion and approach to the Court. To finish the thought, even 15:53:26

1 without this new confirmation, it does appear to me, and it is
2 my judgment, that there was not a serious prospect of pain and
3 that terminating the execution did not have prospect of
4 eliminating pain, and even without my medical expertise, raises
5 serious questions of whether keeping him alive could result in
6 pain. 15:53:53

7 However, so I take -- counsel, that is my judgment in
8 the circumstances, and of course I take responsibility for
9 that. This new input that the team leader has confirmed that
10 Mr. Wood has expired resolves the matter as well. 15:54:14

11 Ms. Konrad, I know you are in quite a spot here, and I
12 don't want -- I want to give you the opportunity to consider
13 what it is that you want to request of the Court, if anything
14 further.

15 MS. KONRAD: Yes, Judge Wake. I would just like to
16 say for the record, at this point the finding that there was no
17 evidence of pain is premature. The reason -- 15:54:35

18 THE COURT: I'm sorry, Ms. Konrad. I wonder, because
19 I don't want you to be misled. I am not finding that there was
20 not pain before. I'm not finding that at all. I'm addressing
21 the circumstance that we are in now. With the necessity of
22 having had even this extremely accelerated discussion, I am
23 addressing the situation now, and that's what I'm addressing.
24 So I do invite you to say whatever you would like about that.
25 But I did not want you to misunderstand me as suggesting that 15:55:16

1 there had been a lack of pain before. That is a matter that
2 may come before the Court in plenary matter soon.

3 So go ahead, Ms. Konrad.

4 MS. KONRAD: Thank you, Judge. That was the main
5 concern that I just wanted to make sure that we wouldn't come 15:55:31
6 to you in this emergency posture if we hadn't had true concern
7 and thought that our client was, in fact, suffering based on
8 the witness's observations of him. And I really appreciate you
9 coming, and I know that you were at a ceremony for Judge
10 Broomfield so I just would like to thank you for taking the 15:55:53
11 time to hear this out even though the client eventually expired
12 while we were on the phone.

13 THE COURT: Not at all. It's my responsibility. And
14 I have attempted to deal with it as rapidly as humanly
15 possible. 15:56:07

16 Anything further, Mr. Zick?

17 MR. ZICK: No, Your Honor.

18 THE COURT: All right. Well, I'm going to have the
19 court reporter type up this transcript and file it so it's
20 publicly available. And just let me pause for a moment. 15:56:18

21 Mr. Zick, there are no other warrants of execution out
22 for any of the other plaintiffs, correct?

23 MR. ZICK: Correct, Judge.

24 THE COURT: All right. So there will -- there will be
25 time to deal with whatever consequence these events have for 15:56:45

1 other plaintiffs.

2 So with that, again, I thank both counsel for your
3 diligence and the utmost urgency with which we addressed this
4 matter.

5 Okay. With respect to the motion that Ms. Konrad has
6 filed, that's the Motion For Emergency Stay of Execution,
7 Document Number 26, it is ordered that the motion is denied as
8 moot for the reasons stated on the record.

15:57:01

9 With that, I thank you all, and we will be adjourned.

10 (Proceeding concluded at 3:57 p.m.)

15:57:20

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C E R T I F I C A T E

I, LAURIE A. ADAMS, do hereby certify that I am duly appointed and qualified to act as Official Court Reporter for the United States District Court for the District of Arizona.

I FURTHER CERTIFY that the foregoing pages constitute a full, true, and accurate transcript of all of that portion of the proceedings contained herein, had in the above-entitled cause on the date specified therein, and that said transcript was prepared under my direction and control.

DATED at Phoenix, Arizona, this 23rd day of July, 2014.

s/Laurie A. Adams

Laurie A. Adams, RMR, CRR