

No. _____

**IN THE COURT OF CRIMINAL APPEALS
FOR THE STATE OF TEXAS**

_____)	
)	
EX PARTE DERRICK SONNIER,)	
)	NO. _____
)	
APPLICANT)	
)	
_____)	

MOTION FOR STAY OF EXECUTION

**MR. SONNIER IS SCHEDULED TO BE EXECUTED TODAY,
TUESDAY, JUNE 3, 2008, SOMETIME AFTER 6:00 P.M.**

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Counsel for Applicant Sonnier

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TO THE HONORABLE JUDGES OF THIS COURT:

Derrick Sonnier, through undersigned counsel, respectfully requests that this Court order a stay of his execution, currently scheduled for today, June 3, 2008, to permit resolution of the question of the constitutionality of Texas' lethal injection practice. This very question is pending before this Court in two other cases. Moreover, just five days ago TDCJ adopted a revised execution protocol that has never been examined by any court. In light of these facts and developments, Mr. Sonnier requests a stay of his scheduled execution. In support, Mr. Sonnier would show the following:

Currently pending before this court are two cases which present the question of the constitutionality of lethal injection. *See In re Heliberto Chi*, Wr. No. 61-600-03; *In re Bobby Woods*, Wr. No. 44,856-04. This Court has asked for briefing in both cases, and both are still pending before this Court. They squarely present the question of whether

Texas' lethal injection practice violates the Eighth Amendment prohibition against cruel and unusual punishment. Indeed, the Supreme Court decision in *Baze v. Rees* compels each state to make that determination on an individual basis, and to do so with the adequate time and accurate information demanded by the gravity of the issue presented.

Moreover, undersigned counsel found out *yesterday* that the Texas Department of Criminal Justice (hereinafter "TDCJ") adopted, on May 30, 2008, a new lethal injection protocol. That protocol has never been examined by any court. Among other revisions, it sets a floor for the training and qualifications of the executioner – a floor that Mr. Sonnier has no idea if TDCJ has met.

In his contemporaneously filed pleadings, Mr. Sonnier raises a challenge to the lethal injection protocol that he understands the State of Texas intends to use in carrying out his execution. Mr. Sonnier is entitled to a stay from this Court because there is a substantial risk that he will suffer irreparable injury and cruel and unusual punishment if a stay of execution is denied, in violation of the Eighth and Fourteenth Amendments to the United States Constitution. It would be a perversion of justice to permit Mr. Sonnier's execution to proceed when the very question of the constitutionality of the manner in which he is to be executed is under consideration by this Court. It would be a mockery of our system to permit the State of Texas to proceed with an execution according to protocols which were adopted only days ago, and which raise grave concerns about the risk of torture that will be inflicted.

These facts and developments provide an equitable, moral, and legal mandate for a stay of Mr. Sonnier's scheduled execution.

PRAYER FOR RELIEF

Accordingly Mr. Sonnier respectfully requests that this Court stay his execution, currently scheduled for Tuesday, June 3, 2008, pending this Court's resolution of the question presented in *Woods* and *Chi*: whether Texas' lethal injection practice and protocol is constitutional. Such resolution must be made in light of the new protocol adopted by TDCJ just five days ago. Alternatively, Mr. Sonnier requests that this Court issue a stay, authorize the trial court to consider the claims raised in his successive application, and instruct the trial court to conduct an evidentiary hearing for the purpose of examining the merits of his claims.

Mr. Sonnier further requests that this Court grant any other relief that law or justice may require.

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