

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

John Ley
Clerk of Court

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October 23, 2012

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 12-15422-P

Case Style: John Ferguson v. Secretary, Florida Department

District Court Docket No: 1:12-cv-23817-DTKH

The following action has been taken in the referenced case:

The enclosed order has been ENTERED.

Sincerely,

JOHN LEY, Clerk of Court

Reply to: Jenifer L. Tubbs

Phone #: 404-335-6166

MOT-2 Notice of Court Action

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 12-15422

JOHN FERGUSON,

Petitioner - Appellant,

versus

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent - Appellee.

Appeal from the United States District Court
for the Southern District of Florida

Before CARNES, WILSON and PRYOR, Circuit Judges.

PER CURIAM:

This court is in receipt of the district court's order, issued October 23, 2012, granting a Certificate of Appealability (COA) on the following issues:

A. Whether the decision of the Florida Supreme Court involved an unreasonable application of the Un[ited] States Supreme Court's decision[s] in *Ford* and *Panetti*.

B. Whether the Florida Supreme Court's affirmance of the state trial court was based on an unreasonable determination of the facts in light of the

evidence presented in the state court proceeding, viz, that (a) the petitioner has a documented history of paranoid schizophrenia; (b) he is not malingering, and (c) he has a fixed grandiose delusion that he is the “Prince of God.”

Pursuant to Eleventh Circuit Rule 22-4(a)(7), this panel is required to “grant a temporary stay pending consideration of the merits of the appeal if necessary to prevent mooting the appeal.” However, “the panel may, after hearing, deny a stay if it makes written findings that:

- (i) the appeal is frivolous, or is lacking any factual basis in the record, or is squarely foreclosed by statute, rule, or authoritative court decision; or
- (ii) the petition is successive, and the requirements for dismissal are met.”

In this case, Ferguson’s death will render his appeal moot. Accordingly, the court hereby:

- (1) Grants the Petitioner’s Emergency Motion for Stay of Execution;
- (2) Directs the parties to brief the Rule 22-4(a)(7)(i) and (ii) issues,

including whether the temporary stay should be extended, and the merits of the issues identified in the Certificate of Appealability, pursuant to the following schedule:

Petitioner shall file a brief on the merits by Monday, October 29, 2012, at 12:00 p.m. Respondent shall have until Monday, November 5, 2012, at 12:00 p.m. to file a response brief. Petitioner shall then have until Tuesday, November 6,

2012, at 12:00 p.m. to file a reply brief. The parties are directed to file the briefs electronically and to serve the briefs to opposing counsel electronically at the same time.

DONE AND ORDERED.