



## 11/17/94 DAVID J. LAWRIE v. STATE DELAWARE

1994 | Cited 0 times | Supreme Court of Delaware | November 17, 1994

### ORDER

This 17th day of November, 1994, the Court, having considered the submissions of the parties, it appears that:

1. Appellant was convicted of three counts of first degree murder, one count of second degree murder, second degree burglary and second degree arson and was sentenced to death by the Superior Court. The convictions and sentences were affirmed by this Court on July 8, 1994. *Lawrie v. State*, Del. Supr., 643 A.2d 1336 (1994). A mandate was issued by this Court on July 22, 1994, directing the Superior Court to set a new execution date. The Superior Court entered the sentence on July 29, 1994, setting November 22, 1994, as the execution date. On October 17, 1994, appellant filed a Petition for a Writ of Certiorari in the United States Supreme Court and, as of this date, the Petition remains pending. On October 25, 1994, appellant filed a Motion for Stay of Execution with the Superior Court, which motion was denied by Order dated November 7, 1994. On November 10, 1994, appellant filed a Notice of Appeal from the decision denying his Motion for a Stay of Execution as well as an independent Motion for a Stay of Execution.

2. The State opposes appellant's motion, arguing that the issuance of the mandate on July 22, 1994, divested this Court of jurisdiction. *Bailey v. State*, Del. Supr., Nos. 201, 204, 1981, Herrmann, C.J. (April 2, 1982) (ORDER). In addition, the State contends that appellant has not demonstrated that a stay is warranted based upon the claims now pending before the United States Supreme Court.

3. Although appellant has denominated his present effort to invoke this Court's authority as an appeal, under the extant circumstances, this Court and the United States Supreme Court both have concurrent original jurisdiction to act upon a motion to stay his execution. 28 U.S.C. § 2101(f). See also Del. Const. art. IV § 11(7). Regrettably, appellant has not filed a motion for a stay with the United States Supreme Court. Such inaction is unfortunate, since the United States Supreme Court routinely grants a stay of execution until the Disposition of a petition for certiorari in a case on direct review. *Williams v. Missouri*, 463 U.S. 1301, 77 L. Ed. 2d 1282, 103 S. Ct. 3521 (1983). Although such a stay can reasonably be anticipated, one cannot anticipate when it will be granted. Accordingly, it is advisable to resolve the uncertainty relating to appellant's rapidly approaching execution date, with presumed necessary preparations attendant thereto, and not await similar predictable action when appellant files a motion to stay his execution in the United States Supreme Court. *Id.*

4. Because of the exigencies of time and the present lack of a motion to stay in the United States



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Supreme Court, this Court should exercise its jurisdiction in these unusual circumstances.

IT IS HEREBY ORDERED that, in order to permit appellant an opportunity to appeal from the decision of this Court affirming his convictions and sentences, appellant's sentence of execution is stayed pending Disposition of the Petition for Writ of Certiorari or until further Order of this Court.

IT IS FURTHER ORDERED that the Notice of Appeal of the Superior Court's denial of appellant's Motion for a Stay of Execution is DISMISSED as moot.

BY THE COURT:

Carolyn Berger

Justice

