

File Name: 12a0013p.06

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

In re: OHIO EXECUTION PROTOCOL
LITIGATION,

BENNIE ADAMS, et al.,

Plaintiffs,

CHARLES LORRAINE,

Plaintiff-Appellee,

v.

JOHN KASICH, Governor, State of Ohio;
GARY MOHR, Director, ODRC; DONALD
MORGAN, Warden, Southern Ohio
Correctional Facility; ANONYMOUS
EXECUTION TEAM MEMBERS 1-50, c/o
Southern Ohio Correctional Facility,
Defendants-Appellants.

No. 12-3035

Filed: January 13, 2012

Before: NORRIS, SUHRHEINRICH and STRANCH, Circuit Judges.

ORDER

Before this Court is the State of Ohio's emergency motion to vacate the district court's order staying the execution of Charles Lorraine, scheduled for January 18, 2012, at 10:00 a.m. On January 11, 2012, District Judge Gregory Frost issued a lengthy written opinion granting the stay, based on persistent failure or refusal of the State to follow its own written execution protocol.

Based upon the analysis of the district court's January 11, 2012 Opinion and Order granting a preliminary injunction and a stay of execution, as well as the district court's July 8, 2011 Opinion and Order entered in this same litigation and reported at 801 F. Supp.2d 623 (S.D. Ohio 2011), we conclude that the State's arguments in support of the emergency motion to vacate the stay are not well-taken. We agree with the district court that the State should do what it agreed to do: in other words it should adhere to the execution protocol it adopted. As the district court found, whether slight or significant deviations from the protocol occur, the State's ongoing conduct requires the federal courts to monitor every execution on an ad hoc basis, because the State cannot be trusted to fulfill its otherwise lawful duty to execute inmates sentenced to death.

The State's emergency motion to vacate the stay is DENIED. The stay will remain in place until further order from the district court on the hearing set for February 24, 2012.

ENTERED BY ORDER OF THE COURT

/s/ Leonard Green

Clerk