

Serial: 198740

IN THE SUPREME COURT OF MISSISSIPPI  
No. 2015-TS-00431-SCT

***MISSISSIPPI DEPARTMENT OF  
CORRECTIONS***

v.

***THE RODERICK & SOLANGE  
MACARTHUR JUSTICE CENTER***

**ORDER**

Now before the Court, *en banc*, is “MDOC’s Emergency Motion for Stay Pending Appeal and Request for Expedited Consideration” filed by the Mississippi Department of Corrections (MDOC) and a response filed by the Roderick and Solange MacArthur Justice Center (Justice Center). On March 6, 2015, the Hinds County Chancery Court ordered MDOC to disclose information regarding its execution protocols to the Justice Center. MDOC has appealed the decision and now seeks a stay of the chancellor’s order pending resolution of the case on appeal. The Justice Center opposes a stay. But, if the Court chooses to grant MDOC’s request, the Justice Center seeks a stay of executions during the pendency of this appeal. After due consideration, we find that the motion of MDOC is well-taken and should be granted. The stay of executions during the pendency of this appeal requested by the Justice Center should be denied.

IT IS, THEREFORE, ORDERED that “MDOC’s Emergency Motion for Stay Pending Appeal and Request for Expedited Consideration” filed by the Mississippi Department of

Corrections is granted. Enforcement of the Hinds County Chancery Court's March 6, 2015, Order and Opinion in Hinds County Chancery Court Case. No. G2014-1885 0/3 is stayed pending the issuance of this Court's mandate in this appeal.

IT IS FURTHER ORDERED that the request of the Justice Center for a stay of executions of inmates sentenced to death pending the resolution of this case on appeal is denied.

IT IS FURTHER ORDERED that this appeal is expedited on the following schedule: within ten days of the entry of this order, the court reporter's transcript shall be filed; within twenty days of the entry of this order, the record on appeal shall be filed; within thirty days of the filing of the record on appeal, the appellant's brief and record excerpts shall be filed; within thirty days of the filing of the appellant's brief and record excerpts, the appellee's brief and any record excerpts shall be filed; and within ten days of the filing of the appellee's brief, any reply brief by the appellant shall be filed. Absent extraordinary circumstances, no requests shall be made to modify this schedule.

SO ORDERED, this the 4<sup>th</sup> day of June, 2015.

/s/ William L. Waller, Jr.

WILLIAM L. WALLER, JR.  
CHIEF JUSTICE

**TO AGREE: WALLER, C.J., RANDOLPH, P.J., CHANDLER, PIERCE AND COLEMAN, JJ.**

**PIERCE, J., AGREES TO ORDER WITH SEPARATE WRITTEN STATEMENT.**

**KITCHENS, J., OBJECTS WITH SEPARATE WRITTEN STATEMENT JOINED BY DICKINSON, P.J.; KING, J., JOINS IN PART.**

**KING, J., OBJECTS WITH SEPARATE WRITTEN STATEMENT JOINED BY DICKINSON, P.J.; KITCHENS, J., JOINS IN PART.**

**LAMAR, J., NOT PARTICIPATING.**

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**PIERCE, JUSTICE, AGREEING TO ORDER WITH SEPARATE WRITTEN  
STATEMENT:**

¶1. I agree with the majority to stay the chancellor's order to disclose execution protocol pending appeal and to grant expedited appeal. However, I would hold in abeyance the MacArthur Justice Center's request to stay all executions pending appeal until a request has been made by the State of Mississippi to set an execution date for a particular defendant.

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**KITCHENS, JUSTICE, OBJECTING TO THE ORDER WITH SEPARATE  
WRITTEN STATEMENT:**

¶1. Although I reserve judgment regarding the merits of the present case until this Court carefully considers the case on appeal, I respectfully object to the order entered today and would deny the Emergency Motion for Stay Pending Appeal And Request for Expedited Consideration filed by the Mississippi Department of Corrections (MDOC).

¶2. Mississippi Rule of Civil Procedure 62(c) states that, upon denial of an injunction, “the court *in its discretion may* suspend, modify, restore, or grant an injunction during the pendency of an appeal from such judgment upon such terms . . . as it considers proper for the security of the rights of the adverse party.” Miss. R. Civ. P. 62(c) (emphasis added).<sup>1</sup>

Mississippi Rule of Appellate Procedure 8(c) provides:

A motion for such relief may be made to the Supreme Court . . . but the motion shall show that . . . the trial court has denied an application or has failed to

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<sup>1</sup>*See also* Miss. R. Civ. P. 62(g) (“The provisions of this rule do not limit any power of an appellate court or of a judge or justice thereof to stay proceedings during the pendency of an appeal . . .”).

afford the relief which the applicant has requested, with the reasons given by the trial court for its action. The motion shall also show the reasons for the relief requested and the facts relied upon and, if the facts are subject to dispute, the motion shall be supported by affidavits or other sworn statements.

M.R.A.P. 8(c). As Justice King astutely observes in his separate statement, this Court must consider the following: (1) whether “the applicant [has made] a strong showing that he is likely to succeed on the merits of the appeal,” (2) whether “the applicant [has established] that unless a stay is granted he will suffer irreparable injury,” (3) whether “substantial harm will come to other interested parties,” and (4) whether “a stay would do no harm to the public interest.” *Bd. of Trs. of Jackson Pub. Sch. Dist. v. Knox*, 638 So. 2d 1278, 1281 (Miss. 1994) (quoting Miss. R. Civ. P. 62(c), (g) cmt.).<sup>2</sup> However, “[t]he party who seeks a stay bears the burden of establishing these prerequisites.” *Id.* (quoting *Ruiz v. Estalle*, 666 F. 2d 854, 856 (5th Cir. 1982)).

¶3. Based on the materials presented to the Court at this juncture,<sup>3</sup> I am of the opinion that MDOC’s motion for a stay ought to be denied. On March 6, 2014, the Chancery Court of the First Judicial District of Hinds County found the following:

[I]n this case there is no evidence that shows any information requested by the Justice Center contains any confidential or privileged information. There is no evidence that the information requested contains a third party’s trade secrets. And there is no evidence that shows any confidential financial information is

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<sup>2</sup> That comment to Rules 62(c) and (g) of our Mississippi Rules of Civil Procedure, as cited in *Knox*, has since been repealed, effective July 1, 2014, by order of this Court on June 9, 2014. The standard remains viable, however, by virtue of our opinion in *Knox*. See *Knox*, 638 So. 2d at 1281.

<sup>3</sup>At present, this Court has before it nothing more than motions, responses, and attachments submitted by the parties. To my knowledge, the appellate record has not yet been designated.

at stake of being revealed. All that is present in this case is fear. There is stone cold fear that if names are released threats will be made and ultimatums will be given and people and entities will suffer harm. But that's all that is present here. Fear.

Thereafter, on April 1, 2015, the chancellor denied MDOC's motion for a stay.

¶4. The Public Records Act contains no exception which would allow the information sought by the MacArthur Justice Center to remain confidential, as MDOC recognizes. It is true, as MDOC argues, that a court is vested with “authority to declare a public record confidential or privileged.” *Cole v. Ferrell*, Nos. 2012-IA-01103-SCT, 2011-CA-01130-SCT, 2012 WL 6062142, at \*4 (Miss. Dec. 6, 2012); *see also* Miss. Code Ann. § 25-61-11 (Rev. 2010) (“The provisions of this chapter shall not be construed to conflict with, amend, repeal or supersede any constitutional or statutory law or decision of a court of this state or the United States which at the time of this chapter is effective or thereafter specifically declares a public record to be confidential or privileged, or provides that a public record shall be exempt from the provisions of this chapter.”). The chancellor did not find that it was necessary in the case before us today to declare the information sought by the MacArthur Justice Center to be confidential or privileged. This Court will consider carefully the propriety and legal correctness of that decision during the course of the appeal. When this Court considers the merits of the present appeal, the chancellor's decision will be subject to an abuse of discretion standard. This Court will be required to defer to the decision of the chancellor “unless . . . the chancellor abused [her] discretion, was manifestly wrong, clearly erroneous or applied an erroneous legal standard.” *Venture Sales, LLC v. Perkins*, 86 So.

3d 910, 913 (Miss. 2012) (internal citations omitted). I find no present proof or even an indication that the chancellor has abused her discretion in any regard.

¶5. I can find no reason to second guess the sound judgment of the chancellor in her denial of MDOC's motion for a stay. Based on the record before this Court at present, I am of the opinion that MDOC's request for a stay fails on each and every factor this Court must consider. *See Knox*, 638 So. 2d at 1281. MDOC has not demonstrated a likelihood for success on the merits of its appeal. *Id.* Additionally, MDOC fails to demonstrate that it will suffer irreparable injury, that other parties will be harmed substantially, or that the public interest will be affected adversely by the denial of a stay. *Id.*

¶6. MDOC's Emergency Motion for Stay Pending Appeal And Request for Expedited Consideration ought to be denied. I therefore decline to join today's order.

**DICKINSON, P.J., JOINS THIS SEPARATE WRITTEN STATEMENT.  
KING, J., JOINS IN PART.**



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**KING, JUSTICE, OBJECTING TO THE ORDER WITH SEPARATE  
WRITTEN STATEMENT:**

¶1. For the reasons stated below, I object to the order entered herein.

¶2. On March 6, 2015, Hinds County Chancellor Owens directed the Mississippi Department of Corrections (MDOC) to fully comply with a Public Records Act request from the MacArthur Justice Center for information on its execution protocols. Chancellor Owens declined to stay the execution of that order and MDOC has filed with this Court its request for an emergency stay pending appeal.

¶3. Generally, to determine whether it is appropriate to grant a stay, the Court considers the following factors: (1) likelihood of success on the merits of the appeal, (2) irreparable harm to the appellant absent a stay, (3) potential harm to other parties, and (4) the public interest. *Bd. of Trustees of the Jackson Pub. Sch. Dist. v. Knox*, 638 So. 2d 1278, 1281 (Miss. 1994) (quoting Miss. R. Civ. P. 62, cmt.). At this point, MDOC does not appear to have established that it is likely to prevail on the claim that this information should be exempt from disclosure under the Public Records Act. However, significant public interest exists in

this matter from both those groups who support the death penalty, as well as those groups who oppose the death penalty. Therefore, out of an abundance of caution, I believe it would be appropriate to grant MDOC's motion for an emergency stay, provided a temporary moratorium is also placed on all executions in this State pending the resolution of this appeal.

¶4. The majority grants the stay requested by MDOC, but specifically denies the moratorium on executions requested by the Justice Center. Accordingly, I decline to join this order.

**DICKINSON, P.J., JOINS THIS SEPARATE WRITTEN STATEMENT.  
KITCHENS, J., JOINS IN PART.**