
IN THE SUPREME COURT OF MISSISSIPPI
No. 2002-DP-00282-SCT

THOMAS EDWIN LODEN, JR.

Appellant

v.

STATE OF MISSISSIPPI

Appellee

MOTION TO SET EXECUTION DATE

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COMES NOW the State of Mississippi and moves this Court to set an execution date for the imposition of Thomas Edwin Loden, Jr.'s death sentence in the above-captioned case. In support, the State shows as follows:

STATEMENT OF FACTS

In 2000, Loden kidnapped sixteen-year-old Leesa Marie Gray after discovering her stranded on the side of the road. *Loden v. State*, 971 So. 2d 548, 552 (Miss. 2007) ("*Loden I*"). He spent the next four hours repeatedly raping and sexually battering Leesa before suffocating and manually strangling her. *Id.* Loden recorded various portions of the torture he inflicted on Leesa. *Id.*

Loden was indicted for capital murder, rape, and four counts of sexual battery. *Id.* Loden waived his right to a jury for guilt and sentencing determinations and pleaded guilty to all six charges. *Id.* The Circuit Court of Itawamba County accepted his plea and held a sentencing hearing. *Id.* Loden waived cross-examination of all the State's witnesses, waived objections to all the State's exhibits, and did not offer any mitigation evidence. *Id.*

The circuit court sentenced Loden to death, finding that all four factors under Mississippi Code Annotated section 99-19-101(7) were satisfied and “that sufficient aggravating circumstances existed, and that the mitigating circumstances do not outweigh the aggravating circumstances and that the death penalty should be imposed.” *Id.* (internal quotation marks omitted). The circuit court also sentenced Loden to thirty years in the custody of the Mississippi Department of Corrections for rape and thirty years for each of his four sexual battery convictions. *Loden v. State*, 264 So. 3d 707, 709 (Miss. 2018) (“*Loden VI*”). The circuit court ordered his sentences to run consecutively. *Id.*

PROCEDURAL HISTORY

Loden challenged his conviction and sentence many times. This Court rejected all of his claims on direct appeal in *Loden I*. This Court also denied Loden’s petition for post-conviction relief, *Loden v. State*, 43 So. 3d 365 (Miss. 2010) (“*Loden II*”); his successive petition for post-conviction relief, *Loden v. State*, 222 So. 3d 312 (Miss. 2017) (“*Loden V*”); and his second successive petition for post-conviction relief in *Loden VI*. The United States District Court for the Northern District of Mississippi rejected Loden’s federal habeas petition, *Loden v. Epps*, 2013 WL

5243670, Civil Action No. 1:10CV311-NBB (N.D. Miss. 2013) (“Loden III”), and the Fifth Circuit affirmed, *Loden v. McCarty*, 778 F.3d 484 (5th Cir. 2015) (“*Loden IV*”).

Loden joined several other plaintiff prisoners in filing a Complaint for Preliminary and Permanent Injunctive Relief under 42 U.S.C. § 1983 in the United States District Court for the Southern District of Mississippi. *See Jordan et al. v. Hall et al.*, No. 3:15-cv-00295-HTW-LRA (S.D. Miss. Apr. 15, 2015) (the § 1983 Action). The § 1983 Action challenges the State’s lethal injection protocol. After the plaintiffs filed the § 1983 Action, the State revised its lethal injection protocol to provide for the use of midazolam if thiopental or pentobarbital cannot be obtained. The district court granted a “sweeping preliminary injunction” preventing the State from using compounded pentobarbital or midazolam, but the Fifth Circuit reversed. *Jordan v. Fisher*, 823 F.3d 805, 809 (5th Cir. 2016).

ARGUMENT

This Court’s 2018 denial of Loden’s second successive petition for post-conviction relief brought the litigation of this case to an end. The

§ 1983 Action is not an impediment to setting Loden's execution and this Court should therefore set Loden's execution date.

This Court is vested with the authority to set an execution "on motion of the state that all state and federal remedies have been exhausted...." Miss. Code Ann. § 99-19-106. Loden's state and federal remedies have been exhausted. The only pending litigation is the § 1983 Action. But undersigned counsel could find no case in which this Court has ever held that a pending § 1983 action is an impediment to execution. And the United States Supreme Court disfavors stays of execution when a § 1983 action is the only pending litigation. *See Nelson v. Campbell*, 541 U.S. 637, 649 (2004) ("the mere fact that an inmate states a cognizable § 1983 claim does not warrant the entry of a stay as a matter of right"); *Hill v. McGonough*, 547 U.S. 573, 574 (2006) (a stay of execution "is an equitable remedy not available as a matter of right, and equity must be sensitive to the State's strong interest in enforcing its criminal judgments without undue interference from federal courts").

As Loden has exhausted all state and federal remedies, this Court should set an execution date consistent with section 99-19-55(1). Under that provision, the execution of a person condemned to suffer death "shall

be inflicted at 6:00 p.m. or as soon as possible thereafter with the next twenty-four (24) hours at an appropriate place designated by the Commissioner of the Mississippi Department of Corrections.” Miss. Code Ann. § 99-19-55(1). This Court’s order setting the execution date should set the time frame in which the execution should take place since the statutorily permitted timeframe could encompass more than one calendar day.

CONCLUSION

The State moves this court to set the execution date within twenty-eight days as no legal impediment exists to deter the setting of this execution date.

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CERTIFICATE OF SERVICE

I, Allison K. Hartman, certify that I have electronically filed this document with the Clerk of the Court using the MEC system, which sent notification to all counsel of record, and mailed, via U.S. Mail, postage pre-paid to the following:

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THIS, the 4th day of October, 2022.

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