

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CLEVELAND

Danny Lee Hill,	*	
	*	Case No. 4:96-cv-00795
Petitioner	*	
	*	Judge John R. Adams
v.	*	
Carl Anderson, Warden	*	Death Penalty Case
	*	
Respondent	*	

WARDEN'S OPPOSITION TO
STAY OF EXECUTION OF KEVIN KEITH
IN AID OF HABEAS DISCOVERY IN HILL CASE

The Warden opposes a stay of execution of Kevin Keith in aid of habeas discovery in Hill's case because the Court lacks jurisdiction to do so.

The All Writs Act provides that "[t]he Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651. However, when a federal court is asked to enjoin a state-court proceeding, the Anti-Injunction Act limits the scope of the federal court's authority: "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." See *Lorillard Tobacco Company v. Chester, Wilcox and Saxbe*, 589 F.3d 835, 843-844 (6th Cir. 2009). A condemned prisoner's execution is a state proceeding for the purposes of the Anti-Injunction Act. See *McFarland v. Scott*, 512 U.S. 849, 857-858 (1994).

The Anti-Injunction Act prohibits this Court from granting Hill's motion. The habeas corpus statute does not authorize a federal district court to enjoin the execution of a prisoner who has not applied for habeas corpus relief. Moreover, the All-Writs Act does not provide such authority, because, contrary to Hill's arguments, a stay of Keith's execution is not necessary in aid of this Court's habeas corpus jurisdiction. This Court has entered no order relating to Keith's possible testimony; indeed, the Court has not ordered any discovery as yet with respect to Hill's petition. Moreover, even if the Court did grant leave to conduct discovery, there is no reasonable basis for finding that a stay of Keith's execution is necessary to preserve his potential testimony. The federal rules of civil procedure provide numerous ways to obtain any relevant information Keith may have before his execution. "Although [the All Writs] Act empowers federal courts to fashion extraordinary remedies when the need arises, it does not authorize them to issue ad hoc writs whenever compliance with statutory procedures appears inconvenient or less appropriate." *Pennsylvania Bureau of Correction v. United States Marshall Services*, 474 U.S. 34, 43 (1985) (holding that All Writs Act did not authorize federal court to order U.S. Marshalls to transport state prisoners to the federal courthouse to testify in an action brought by a state prisoner under 42 U. S. C. § 1983 against county officials). Moreover, it is obvious that a stay of Keith's execution would not necessarily result in Keith's willingness to provide information to Hill's counsel or his cooperation as a potential witness.

In short, Hill's motion is patently without merit and should therefore be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 28, 2010, a copy of the forgoing document, *Warden's Opposition To Stay Of Execution Of Kevin Keith In Aid Of Discovery In Hill's Case* was served on opposing counsel by the ECF system..

s/ Stephen E. Maher

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