

No. 18-1418

FILED
Apr 18, 2018
DEBORAH S. HUNT, Clerk

**UNITED STATES COURTS OF APPEALS
FOR THE SIXTH CIRCUIT**

HENRY HILL; JEMAL TIPTON; DAMION)
LAVOIAL TODD; BOBBY HINES; KEVINBOYD;)
BOSIE SMITH; JENNIFER PRUITT; MATTHEW)
BENTLEY; KEITH MAXEY; GIOVANNI CASPER;)
JEAN CARLOS CINTRON; NICOLE DUPURE;)
DONTEZ TILLMAN, individually and on behalf of)
those similarly situated,)

Plaintiffs-Appellees,)

v.)

RICK SNYDER, in his Official Capacity as Governor)
of the State of Michigan; HEIDI E. WASHINGTON,)
Director of the Michigan Department of Corrections;)
MICHAEL EAGEN, Chair, Michigan Parole Board;)
BILL SCHUETTE, Attorney General,)

Defendants-Appellants.)

ON APPEAL FROM THE
UNITED STATES DISTRICT
COURT FOR THE EASTERN
DISTRICT OF MICHIGAN

ORDER

BEFORE: MERRITT, STRANCH, and DONALD, Circuit Judges

JANE B. STRANCH, Circuit Judge. The factual and procedural history of this case is set forth in detail in this court's prior decisions. *See Hill v. Snyder (Hill II)*, 878 F.3d 193 (6th Cir. 2017); *Hill v. Snyder (Hill I)*, 821 F.3d 763 (6th Cir. 2016).

The instant appeal concerns the district court's resolution of the parties' competing motions for summary judgment on Count V of the Second Amended Complaint, which count alleges that the elimination of good time credits and disciplinary credits by Mich. Comp. Laws § 769.25a(6) violates the Ex Post Facto Clause of the United States Constitution. On March 29,

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in anticipation of an unfavorable summary judgment ruling, Defendants moved the district court for “a temporary, 14-day stay on any [forthcoming] order to allow Defendants to file an appeal.” The district court entered a decision ruling in Plaintiffs’ favor on Count V on April 9 and denied Defendants’ request for a 14-day stay that same day. The district court’s summary judgment decision included permanent injunctive relief that reinstated the good time credits and disciplinary credits to eligible Plaintiffs who had already been resentenced and ordered that no such credits be eliminated for eligible Plaintiffs who still await resentencing. Defendants filed their Notice of Appeal on April 11 and moved this court for an emergency stay of the district court’s order denying the motion for stay on April 12.

“A stay is not a matter of right,” but is rather “an exercise of judicial discretion” that requires examining “the circumstances of the particular case.” *Nken v. Holder*, 556 U.S. 418, 433 (2009) (quoting *Virginian Ry. Co. v. United States*, 272 U.S. 658, 672–73 (1926)). “The party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion.” *Id.* at 433–34. Four factors must be considered in deciding whether to issue a stay: “(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.” *Nken*, 556 U.S. at 434 (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)). These four factors “are interconnected considerations that must be balanced together.” *Coal. to Defend Affirmative Action v. Granholm*, 473 F.3d 237, 244 (6th Cir. 2006). “As the moving party, [Defendants bear] the burden of showing” that a stay is warranted. *Serv. Emp. Int’l Union Local 1 v. Husted*, 698 F.3d 341, 343 (6th Cir. 2012).

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Upon review, we conclude that the balance of these factors weighs against staying the district court's order. Indeed, for the reasons set forth in *Hill II*, 878 F.3d at 211–13, Defendants appear unlikely to succeed on the merits of their appeal. The factual information submitted to the district court since *Hill II* further undermines Defendants' position on Count V. We decline to disturb the district court's thoughtful and well-reasoned decision.

Accordingly, Defendants' motion for a stay pending appeal is **DENIED**. Plaintiffs' Motion for Immediate Assignment to the Original Panel is **GRANTED** pursuant to Sixth Circuit Internal Operating Procedure 34(b)(2). The court will, however, consider this appeal on an expedited basis. Accordingly, Defendants are to submit their merits brief by **May 10, 2018**, Plaintiffs are to respond by **May 31, 2018**, and Defendants may reply by **June 7, 2018**.