

FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

GRAHAM S. HENRY,
Petitioner-Appellant,

v.

CHARLES L. RYAN,
Respondent-Appellee.

No. 09-99007

D.C. No.
2:02-CV-00656-
SRB

ORDER

Filed December 30, 2014

BEFORE: Sidney R. Thomas, Chief Judge, and Alex Kozinski, Kim McLane Wardlaw, William A. Fletcher, Ronald M. Gould, Marsha S. Berzon, Richard C. Tallman, Consuelo M. Callahan, Carlos T. Bea, Morgan Christen, and Jacqueline H. Nguyen, Circuit Judges.

SUMMARY*

Habeas Corpus/Death Penalty

The en banc court denied Graham S. Henry's motion for a stay of proceedings pending issuance of a decision in *McKinney v. Ryan*, No. 09-99018, and directed the Clerk to issue the mandate, in this case in which this court voted in

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

favor of en banc rehearing of a three-judge panel's April 8, 2014, order denying Henry's motion for reconsideration of the panel's November 1, 2013, order denying his petition for panel rehearing of its affirmance of the denial of his habeas corpus petition challenging his conviction and capital sentence for murder and related offenses.

Having heard oral argument in *McKinney*, and having considered the record and the briefs filed by the parties in this case, the en banc court concluded that (1) the facts and legal arguments are adequately presented in the briefs and record, and that the decisional process would not be significantly aided by oral argument; and (2) a stay of proceedings and further en banc consideration in this case is not necessary to secure or maintain the uniformity of this court's decisions.

COUNSEL

Jon M. Sands, Federal Public Defender, Robin C. Konrad (argued) and Amy E. B. Kapp, Assistant Federal Public Defenders, Phoenix, Arizona, for Petitioner-Appellant.

Thomas C. Horne, Attorney General, Kent Cattani, Chief Counsel, Criminal Appeals/Capital Litigation Section, and Jonathan Bass (argued), Assistant Attorney General, Criminal Appeals/Capital Litigation Section, Tucson, Arizona, for Respondents-Appellees.

ORDER

THOMAS, Chief Judge:

On April 8, 2014, a three-judge panel of this Court, with one judge dissenting, filed an order denying Henry's motion for reconsideration of the panel's November 1, 2013 order denying his petition for panel rehearing and a stay of proceedings pending the issuance of a decision by the en banc panel in *McKinney v. Ryan*, No. 09-99018, a case involving related issues.

A judge of this Court *sua sponte* requested a vote as to whether the panel's April 8, 2014, order should be reheard en banc. A majority of the nonrecused active judges voted in favor of rehearing the order en banc. On September 4, 2014, an order was issued granting en banc review.

Subsequently, upon the vote of a majority of the nonrecused active judges, this case was designated as a related case to *McKinney* and consolidated for rehearing en banc before the same en banc panel. *See* Ninth Circuit Rule 35-3. On December 15, 2014, in Pasadena, California, the en banc panel heard oral argument in *McKinney* and held a subsequent conference on both the *McKinney* and *Henry* cases.

Having heard the argument in *McKinney*, and having considered the record and the briefs filed by the parties in this case, the Court concludes that: (1) the facts and legal arguments are adequately presented in the briefs and record, and that the decisional process would not be significantly aided by oral argument; and (2) a stay of proceedings and

further en banc consideration in *Henry* is not necessary to secure or maintain the uniformity of the Court's decisions.

Therefore, this case is submitted for decision without oral argument. Fed. R. App. P. 34(a)(2). Henry's motion for a stay of proceedings pending the issuance of a decision in *McKinney* is **DENIED**. En banc proceedings in this case are concluded. The Clerk is directed to issue the mandate.