



In this capital murder case, Defendant Robert Allen Gattis has filed a Motion for Stay of Further Proceedings. The motion was filed on April 11, 2002, two days after filing a Motion for Postconviction Relief, the second such motion filed by Gattis. This motion seeks to delay any ruling on defendant's recently filed postconviction motion until the United States Supreme Court has ruled in *Ring v. Arizona*,<sup>1</sup> a case which challenges the Arizona death penalty sentencing procedure on the ground that it is unconstitutional because it removes the fact finding necessary to impose the penalty of death from the jury and places it with the Court. The case will determine the applicability of *Apprendi v. New Jersey*,<sup>2</sup> a decision which held that any fact that increases the penalty for a crime beyond the statutory maximum must be decided by a jury and proved beyond a reasonable doubt. While Delaware's capital sentencing scheme is not identical to Arizona's, it does place ultimate responsibility for the imposition of the death penalty with the Court, thus making Delaware's statute susceptible to scrutiny as well. Since a broad ruling in *Ring* could affect his case, Gattis claims he has established a basis for this Court to grant his Motion for Stay.

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<sup>1</sup> 25 P.3d 1139 (Ariz. 2001), *cert. granted*, 151 L.Ed.2d 758 (Jan. 11, 2002).

<sup>2</sup> 530 U.S. 466 (2000).

The gruesome facts leading up to Gattis' conviction and sentence for murder have been recounted in numerous decisions of both state and federal courts. In essence, after kicking in his girlfriend's apartment door, Gattis shot her between the eyes with a .38 caliber handgun. Her murder ended a stormy romantic relationship that had spanned some six years. During this time, Gattis pled guilty to second-degree assault and first-degree reckless endangering for pistol-whipping a man in a bar after Gattis discovered him talking to his girlfriend. For these offenses, Gattis was sentenced to five years imprisonment, suspended for probation.

Following his trial, Gattis was found guilty by a jury of murder first degree, and of the burglary and weapons offenses. A penalty hearing was thereafter conducted before the same jury. The jury unanimously decided that the evidence showed beyond a reasonable doubt the existence of two statutory aggravating circumstances. Specifically, the jury found that 1) the killing was committed during a burglary; and 2) Gattis had previously been convicted of a violent felony.<sup>3</sup> In turn, by a vote of 10 to 2, the jury found, by a preponderance of the evidence, that the statutory and non-statutory aggravating circumstances found to exist outweighed the mitigating circumstances found to exist.

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<sup>3</sup>*Gattis*, 637 A.2d 808, 821 (Del. 1994), *cert. denied*, 513 U.S. 843 (1994).

After considering the recommendation of the jury, the Superior Court Judge first found that the prosecution had established, beyond a reasonable doubt, the two statutory aggravating circumstances. Independently assessing the evidence presented, the Judge then concluded that the aggravating circumstances present in the case outweighed the mitigating circumstances present.<sup>4</sup> The Superior Court Judge thereupon sentenced Gattis to death for Slay's "intentional, premeditated and cold-blooded execution-style murder."

An automatic appeal from a sentence of death is mandated by DEL. C. ANN. tit. 11 §4209(g) (2001). Gattis also filed a direct appeal, alleging numerous errors committed during the course of the trial. The Delaware Supreme Court consolidated the appeals, and on February 28, 1994, the Court, sitting *en banc*, affirmed Gattis' conviction and sentence.<sup>5</sup> Gattis subsequently filed a Petition for Writ of Certiorari to the United States Supreme Court, which was denied.<sup>6</sup>

On October 21, 1994, this Court set an execution date of December 2, 1994. On November 21, 1994, Gattis filed a *pro se* Motion for Postconviction Relief. Since the motion alleged ineffective assistance of counsel, in accordance with Rule 61(l)(3), new counsel was appointed to represent him. On that same date, this Court entered an order staying the scheduled execution and setting a schedule for

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<sup>4</sup>Gattis, 637 A.2d at 822.

<sup>5</sup>Gattis, 637 A.2d 808.

<sup>6</sup>Gattis v. Delaware, 513 U.S. 843 (1994).

submission of an amended motion for postconviction relief. The motion was later denied by the Superior Court,<sup>7</sup> and in the ensuing period, the decision was affirmed.<sup>8</sup>

In November of 1997, Gattis filed a Petition for Writ of Habeas Corpus in the United States District Court for the District of Delaware, and on December 4, 1997, the District Court issued a stay of execution. Gattis' petition was later denied on March 25, 1999,<sup>9</sup> and the Third Circuit Court of Appeals affirmed on January 24, 2002.<sup>10</sup> The mandate was returned to Delaware and the case assigned to this Judge.

In his pending Motion for Postconviction Relief, filed on April 9, 2002, defendant argues that, in light of the United States Supreme Court decision in *Apprendi*,<sup>11</sup> Delaware's capital sentencing scheme violates the Sixth and Fourteenth Amendments to the United States Constitution. He submits that his death sentence was imposed in violation of *Apprendi*, a decision which held that "any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt."<sup>12</sup>

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<sup>7</sup> See *State v. Gattis*, 1995 Del. Super. LEXIS 608 (Del. Super. 1995).

<sup>8</sup> *Gattis v. State*, 697 A.2d 1174 (Del. 1997), cert. denied sub. nom., 522 U.S. 1124 (1998).

<sup>9</sup> *Gattis v. Snyder*, 46 F. Supp.2d 344 (D. Del. 1999).

<sup>10</sup> *Gattis v. Snyder*, 278 F.3d 222 (3d Cir. 2002).

<sup>11</sup> 530 U.S. 466.

<sup>12</sup> *Id.* at 490.

According to defendant, his jury was still required to find the statutory aggravating circumstances instead of simply acting in an advisory capacity.

Although the *Apprendi* case has been persuasively distinguished by the State in its Answer to the pending Rule 61 motion, and although the Delaware Supreme Court has twice rejected similar arguments made by defendants facing death sentences based upon *Apprendi*,<sup>13</sup> Gattis' latest challenge does take on a different twist. He now garners additional support for his constitutional challenge by pointing out that the United States Supreme Court is currently deciding the applicability of *Apprendi* to capital sentencing schemes such as the one contained in Delaware's statute.<sup>14</sup> Depending upon its breadth, the United States Supreme Court decision in the *Ring* case, which is expected by the end of this term on June 30, 2002, could change the way the death penalty is imposed in states where judges, not juries, determine capital murder sentences, including the Delaware scheme that was employed in this case. While acknowledging the substantial procedural bars to Rule 61(i)(4) relief, defendant maintains that "reconsideration of the claim is warranted in the interest of justice," because of the pending challenge to the death penalty scheme in Arizona, and potentially in Delaware. Quoting from other decisions where Courts have characterized *Apprendi* as a "watershed change

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<sup>13</sup> See *Weeks v. State*, 761 A.2d 804 (Del. 2000); *Capano v. State*, 781 A.2d 556 (Del. 2001).

<sup>14</sup> See *Ring v. Arizona*, 122 S.Ct. 865 (2002) (No. 01-488).

in constitutional law,” defendant argues that this Court should reach the merits of his claim, but not until the U.S. Supreme Court has announced its decision in *Ring*. That is the crux of this companion motion, seeking a stay from this Court’s ruling on the Rule 61 motion.

In his Motion for Stay, defendant points out the enormous impact that the *Ring* case might have upon Delaware’s death penalty statute, the substantial and irreparable harm to defendant if a stay is denied, and the substantial resources brought to bear by the Department of Corrections each time a firm execution date is fixed by the Court. Emphasizing the brief delay entailed in this request, defendant cites two examples of cases where stays have been granted by the United States Supreme Court since the granting of *certiorari* in *Ring*, including two prisoners in Florida, whose death penalty statute was the model for Delaware’s scheme.<sup>15</sup>

The State, on the other hand, relies upon its claim that even if the Court in *Ring* extends *Apprendi* to death cases, it would not apply in this case. It also argues that the decisions cited by defendant are each distinguishable, and that the State and public interest in the finality of criminal judgments is a strong consideration, particularly in light of Gattis’ very questionable ground for Rule 61 relief.

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<sup>15</sup> See *King v. Florida*, 122 S.Ct. 932 (Jan. 23, 2002) (No. 01-7804); *Bottoson v. Florida*, 122 S.Ct. 981 (Feb. 5, 2002) (No. 01-8099); *Brown v. Alabama*, 122 S. Ct. 1462 (Apr. 4, 2002) (No. 01-9454).

In determining whether a stay should be granted, the Court should consider the following factors:<sup>16</sup>

- (a) Whether the movant has made a showing that there are substantial ground(s) upon which relief can be granted;
- (b) Whether there is a likelihood of irreparable harm if a stay is not granted;
- (c) Whether granting a stay would substantially harm the State; and
- (d) Consideration of the public interest involved.

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I turn first to a determination of defendant's prospects for relief. Considering the unique circumstances in Gattis' case, as compared to other cases where the viability of death penalty statutes are also challenged, defendant Gattis will have great difficulty establishing substantial grounds upon which relief may be granted.

Initially, defendant will have to overcome the fact that the present state of the law, which holds Delaware's death penalty scheme valid, even if altered by the *Ring* decision, also establishes that new constitutional rules of criminal procedure are not applicable to those cases which have become final before the new rules are announced.<sup>17</sup> As the result in this case is plainly consistent with precedent existing

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<sup>16</sup>See *Netherland v. Tuggle*, 515 U.S. 951 (1996); *Delo v. Stokes*, 495 U.S. 320 (1990); *Maggio v. Williams*, 464 U.S. 46 (1983); *Barefoot v. Estelle*, 463 U.S. 880, 895-96 (1983).

<sup>17</sup> *Flamer v. State*, 585 A.2d 736 (Del. 1990).



at the time defendant's conviction became final,<sup>18</sup> and does not impose a new obligation on the State, retroactive application is barred. Since federal courts of appeals have thus far decided that *Apprendi* is not to be retroactively applied to cases on collateral review,<sup>19</sup> the United States Supreme Court will not only have to invalidate Delaware's capital sentencing scheme in *Ring*, but also declare that it is to be applied retroactively.

Even if retroactivity were not an issue, defendant nevertheless faces additional obstacles to prevail in his Rule 61 motion.<sup>20</sup> Since virtually all of the procedural bars of the Rule would preclude Gattis' claim, the only escape from the preclusive effect of Rule 61 is if he establishes that "consideration of the claim is warranted in the interest of justice."<sup>21</sup>

Even giving that term more far-reaching scope than the present law requires, the defendant will not likely be able to establish a basis upon which relief can be granted. This is so because, even if the holding in *Apprendi* is extended by the

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<sup>18</sup> See *Id.* at 749.

<sup>19</sup> See *In re Joshua*, 224 F.3d 1281 (11th Cir. 2000); *Talbott v. Indiana*, 226 F.3d 866, 869 (7th Cir. 2000); *Sustache-Rivera v. United States*, 221 F.3d 8, 14-15 (1st Cir. 2000).

<sup>20</sup> Plainly, the instant Rule 61 motion is time-barred, as it was filed more than three years after Gattis' conviction became final. There can also be no real dispute that the factual basis for this claim was available to defendant when he filed his first postconviction motion. Even defense counsel concedes this fact. While the decision in *Walton v. Arizona*, 497 U.S. 639 (1990) (holding that the Arizona capital sentencing scheme does not violate the Sixth Amendment because the death sentence does not have to be imposed by a jury) may have made it more difficult for Gattis to have pressed the argument, it was nonetheless available.

<sup>21</sup> *Maxion v. State*, 686 A.2d 148, 150 (Del. 1996).

*Ring* Court to the death penalty sentencing scheme in Arizona—and more broadly to Delaware’s capital statute—Gattis’ situation is exempted from the general principle because an aggravator in his case is the fact that he had a prior felony conviction.

An understanding of the facts in *Apprendi* and reference to some of the language in that decision provides further explication for this argument. *Apprendi* was a so-called “hate crime” case in which the defendant was charged with and convicted of unlawful possession of a firearm. The defendant was given a 12-year sentence for the firearm’s violation, which had been increased from the usual statutory maximum of ten years, based upon the judge’s finding that the crime had been committed because of racial basis. The question presented on appeal to the United States Supreme Court was whether proof of a hate crime motive was a sentencing factor, which would properly be determined by a judge, or an element of the crime necessitating a jury finding. In striking down the sentence, the majority held, “**other than the fact of a prior conviction**, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury and proved beyond a reasonable doubt.”<sup>22</sup> The majority, citing *Walton v. Arizona*,<sup>23</sup> took caution to exclude the death penalty from its sweeping decision. In rejecting the argument that *Apprendi* might jeopardize any capital

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<sup>22</sup> *Apprendi*, 530 U.S. at 490 (emphasis added).

<sup>23</sup> 497 U.S. 639 (1990).

sentencing scheme in which the judge, and not the jury, decides whether the state has proven the existence of specific aggravating factors difficult to warrant a death sentence, the Court described such a scheme as a system that merely “require[s] judges, after a jury verdict holding a defendant guilty of a capital crime, to find specific aggravating factors before imposing a sentence of death,” and not as a system that “permits a judge to determine the existence of a factor which makes a crime a capital offense.”<sup>24</sup>

In her dissent, Justice O’Connor challenged the majority’s rationale, foreshadowing the Court’s willingness to reconsider the constitutionality of Arizona’s death penalty statute:

The distinction of *Walton* offered by the Court today is baffling, to say the least. The key to that distinction is the Court’s claim that, in Arizona, the jury makes all of the findings necessary to expose the defendant to a death sentence. As explained above, that claim is demonstrably untrue. A defendant convicted of first-degree murder in Arizona cannot receive a death sentence unless a judge makes the factual determination that a statutory aggravating factor exists. Without the critical finding, the maximum sentence to which the defendant is exposed is life imprisonment, and not the death penalty . . . . If the Court does not intend to overrule *Walton*, one would be hard pressed to tell from the opinion it issues today.<sup>25</sup>

In *Ring*, the question of whether this distinction can logically be defended is squarely before the United States Supreme Court.

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<sup>24</sup> *Apprendi*, 530 U.S. at 496-97.

<sup>25</sup> *Id.* at 538 (citations omitted).

On the one hand, Delaware's statute is, as the State points out, different from Arizona's in that a Delaware jury is required to make findings concerning the existence of statutory aggravators, and does determine whether the aggravating factors outweigh the mitigating factors by a preponderance of the evidence. Its finding and the breakdown of the vote are presented to the judge, who then must determine whether a death sentence is appropriate. In Arizona, it is only after a subsequent adversarial hearing at which the judge alone acts as the finder of the necessary statutory elements that a defendant may be sentenced to death. In that sense, Delaware's capital sentencing statute may be said to provide the necessary constitutional safeguards that do not exist in Arizona.

On the other hand, under both the Arizona and Delaware schemes, the jury is clearly not the final arbiter of a sentence of life imprisonment versus death. To the extent that it is the judge, and not a jury, that ultimately imposes a death sentence, if the Arizona statute under review in *Ring* is challenged on that basis, Delaware's capital sentencing scheme is under scrutiny as well.

It is this uncertainty in the validity of capital sentencing schemes that forms the basis for Gattis' request for a stay at this juncture. Even as presented by Gattis, however, he makes out no *Apprendi* claim. One of the statutory aggravating circumstances found by the trial judge was Gattis' prior conviction for assault second degree, a violent felony. *Apprendi* itself specifically excludes from its rule

“the fact of a prior conviction.” Since one statutory aggravating factor here is Gattis’ prior felony conviction — for which all of the safeguards of a finding by a jury beyond a reasonable doubt were already available to Gattis — it is highly unlikely that the *Ring* case, when decided by the United States Supreme Court, will have any actual impact upon Gattis’ sentence in this case.

As the foregoing discussion demonstrates, if the only consideration for the granting of a stay were the likelihood that defendant’s claim had merit, the Court would be hardpressed to find justification to grant it.

The State also makes a persuasive case concerning the substantial harm to the State and to the public interest if the stay were granted. This argument essentially appeals to the societal interest in the enforcement of a valid sentence and in the finality of criminal judgments. Because Gattis’ most recent claim is raised in the context of a second postconviction motion, the State submits that the interest in ending unreasonable delay, and in putting finality to “last ditch” litigation efforts in capital cases such as this, is a strong consideration.

The foregoing factors do indeed weigh heavily in the State’s favor. Notwithstanding these considerations, however, there remains the fact that implementation of Gattis’ death sentence will be irrevocable and final. That concern, standing alone, might not be sufficient to overcome the State’s persuasive showing on the other factors relevant to the Court’s decision, if the requested delay

were for an indeterminate period of time, or even for a period in excess of the approximately eight weeks remaining until June 30, 2002, the conclusion of the Supreme Court term and anticipated issuance of a decision in *Ring*.<sup>26</sup> That amount of time is insignificant when compared to the length of time defendant has been on “death row,” and is miniscule when considered in light of the irreparable nature of a death sentence if the Court were to proceed immediately.

While the Court recognizes that it is unlikely that Gattis will be able to fit the unique circumstances of his Rule 61 claim to justify any relief that might be afforded by the *Ring* decision, there is nevertheless the possibility that that decision may require a complete revision of Delaware’s death penalty statute. When weighed against the brief delay requested by defendant, the only prudent action for this to take is to impose the stay requested by defendant for the limited period required.

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<sup>26</sup> Oral arguments in the *Ring* case were heard on April 22, 2002.

Accordingly, defendant's Motion for Stay of Further Proceedings is hereby granted. The Court will therefore stay ruling on defendant's Motion for Postconviction Relief until the earlier of the United States Supreme Court ruling in *Ring v. Arizona* or June 30, 2002.

**IT IS SO ORDERED.**

*Peggy L. Ableman*  
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PEGGY L. ABLEMAN, JUDGE