

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

\_\_\_\_\_  
No. 16-70028  
\_\_\_\_\_

United States Court of Appeals  
Fifth Circuit

**FILED**

December 14, 2017

Lyle W. Cayce  
Clerk

GERONIMO RENE GUTIERREZ,

Petitioner - Appellant

v.

LORIE DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL  
JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION,

Respondent - Appellee

\_\_\_\_\_  
Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 5:09-CV-543  
\_\_\_\_\_

Before HIGGINBOTHAM, HAYNES, and GRAVES, Circuit Judges.

PER CURIAM:\*

On August 30, 2017, we granted Appellant's motion to stay proceedings in order to allow him to pursue an *Atkins* claim in state court in light of the Supreme Court's decision in *Moore v. Texas*, 137 S. Ct. 1039 (2017). Because we granted Appellant's motion based on his *Atkins* argument, we had no need to determine whether a stay was warranted pending the Supreme Court's

---

\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

No. 16-70028

decision in *Wilson v. Sellers*, No. 16-6855, 2017 WL 737820 (S. Ct. Feb. 27, 2017). We again decline to reach the merits of Appellant’s *Sellers* argument.

However, we granted a stay premised on Appellant’s statement that he would promptly file his *Atkins* claim within ninety days of the Court’s stay order. Appellant failed to do so, instead filing a “status update” informing the court that he requires until February 26, 2018, to do so. We treat Appellant’s status update as a motion for extension of time to file and, finding good cause, GRANT that motion.

IT IS ORDERED that Appellant shall have until February 26, 2018, to file his new *Atkins* claim.

IT IS FURTHER ORDERED that Appellee’s motion for clarification, ECF No. 61, is DENIED as moot.