

IN THE UNITED STATES DISTRICT COURT
 FOR THE MIDDLE DISTRICT OF ALABAMA
 NORTHERN DIVISION

DEMETRIUS FRAZIER,)	
)	
Plaintiff,)	
)	
v.)	CASE NO. 2:13-CV-781-WKW
)	(WO – Do Not Publish)
WALTER MYERS, <i>et al.</i> ,)	
)	
Defendants.)	

ORDER

This court has seven 42 U.S.C. § 1983 lethal injection lawsuits currently pending before it, all at various stages of litigation: the instant case (filed October 21, 2013); *Arthur v. Myers, et al.*, 2:11-cv-438-WKW (filed June 8, 2011); *Grayson v. Sharp, et al.*, 2:12-cv-316-WKW (filed April 6, 2012); *Boyd v. Myers, et al.*, 2:14-cv-1017-WKW (filed October 2, 2014); *Roberts v. Myers, et al.*, 2:14-cv-1028-WKW (filed October 3, 2014); *Myers v. Myers, et al.*, 2:14-cv-1029-WKW (filed October 3, 2014); and *Hunt v. Myers, et al.*, 2:14-cv-1030-WKW (filed October 3, 2014). All of these cases present similar claims of the plaintiffs and defenses of the State. This case, along with *Boyd* and *Roberts*, have motions to set execution dates pending before the Alabama Supreme Court. No motion to set an execution date was filed in *Grayson*, and execution dates were recently set by the Alabama Supreme Court in *Hunt* (April 16, 2015) and *Myers* (June 18, 2015). The February 19, 2015

execution date in *Arthur* was recently stayed pending a trial on May 5–6, 2015, and a final decision by the court.

On March 17, 2015, the court held a joint telephone status conference in this case, *Roberts*, and *Boyd*. Counsel for those plaintiffs and the State participated.¹ Based upon the representations made by both the plaintiffs and the State at this conference, the court reconsidered, *sua sponte*, a motion made by the State in *Arthur* to extend discovery deadlines and to amend the court’s scheduling order. *See Arthur v. Myers, et al.*, 2:11-cv-438-WKW (Doc. # 232.) The court had previously granted the State’s motion in part, extending the deadlines for expert reports and discovery, but had denied the motion to the extent the State sought a continuance of the May 5–6, 2015 final hearing. *See Arthur v. Myers, et al.*, 2:11-cv-438-WKW (Doc. # 235.)

However, following the March 17, 2015 joint status conference, the court reconsidered one of the grounds given by the State for a continuance of the May 5–6, 2015 final hearing in *Arthur*, namely, that the United States Supreme Court’s upcoming decision in *Glossip v. Gross* will affect many of the questions facing the court in *Arthur*. *Glossip* will address, among other things, Florida’s lethal injection protocol, which is substantially similar to Alabama’s, and will likely bear directly

¹ Although *Grayson*, *Hunt*, and *Myers* were not technically part of the March 17, 2015 telephone conference, counsel for those plaintiffs participated in the conference, albeit indirectly, since *Grayson*, *Hunt*, and *Myers* are represented by the same counsel as *Frazier* and *Roberts*.

on the pleading and proof standards in Eighth Amendment lethal injection claims, as well as the scope and type of discovery that is relevant and appropriate in those cases. As a result, the court found that it was in the interests of justice to continue motion and discovery deadlines and the final hearing in *Arthur* until the Supreme Court decides *Glossip* (with a decision expected by the end of June).

This case involves many of the same issues and defenses as those presented in *Arthur* and, therefore, will also be affected by the Supreme Court's decision in *Glossip*. Moreover, based on a joint status report filed by Frazier and the State on March 18, 2015, a delay of a few months in the progress of this litigation will not prejudice Frazier. (*See* Doc. # 29.) Indeed, the State recently moved the Alabama Supreme Court to hold its pending motion to set Frazier's execution in abeyance until after the Supreme Court decides *Glossip*.² The State has also represented that, if the Alabama Supreme Court sets Frazier's execution date, despite its abeyance motion, it will not oppose a motion to stay his execution, whether in the Alabama Supreme Court or this court, until after *Glossip* is decided. Thus, in light of the foregoing, the court finds it appropriate and in the interests of justice to stay these proceedings until after a decision is issued in *Glossip*.

Accordingly, it is ORDERED as follows:

1. This proceeding is STAYED generally.

² This motion had not been ruled on by the Alabama Supreme Court.

2. Within fourteen (14) days from the Supreme Court's decision in *Glossip*, the parties shall jointly, if possible, or individually, if not, file a statement or appropriate motion that informs the court of their respective positions on the issues in this case in view of the *Glossip* decision.

3. The State's Motion to Dismiss (Doc. # 21) is DENIED with LEAVE to REFILE following the Supreme Court's decision in *Glossip*.

DONE this 19th day of March, 2015.

/s/ W. Keith Watkins
CHIEF UNITED STATES DISTRICT JUDGE