Madison v. Allen et al Doc. 65

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

VERNON MADISON,	)	
Petitioner,	)	
	)	
v.	)	**CIVIL ACTION NO. 09-00009-KD-B**
	)	
KIM THOMAS, Commissioner,	)	
Alabama Department of Corrections, *et al*,	)	
Respondents.	)	

ORDER

This action is before the Court on the Respondents' Motion to Stay and Hold in Abeyance (Doc. 59) and the Petitioner's Response thereto (Doc. 64).

Specifically, Respondents seek entry of a stay in this case pending their anticipated filing of an appeal in the United States Supreme Court. Petitioner does not oppose the Respondents' request but suggests a continuance rather than a stay, noting that the Court does not have the power to formally stay proceedings without an order from the Supreme Court or the Eleventh Circuit recalling the mandate. *See* 28 U.S.C. § 2101(f); Hovater v. Equifax Servs., Inc., 669 F. Supp. 392, 393-394 (N.D. Ala. 1987). Regardless, because the Respondents have not yet filed the appeal, the motion is premature.[1] Accordingly, it is **ORDERED** that the Respondents' Motion to Stay and Hold in Abeyance (Doc. 59) is **DENIED.** Respondents, however, are granted leave to file a motion to continue the proceedings if and when the appeal is filed in the Supreme Court. Until such time, the present schedule stands.

DONE and **ORDERED** this the **8th** day of **August 2012.**

/s/ Kristi K. DuBose
KRISTI K. DuBOSE
UNITED STATES DISTRICT JUDGE

[1] The Court's review of the United States Supreme Court's docket indicates that to date, no such appeal has been filed. *See* http://www.supremecourt.gov/docket/docket.aspx (last visited 8/8/12).

Dockets.Justia.com