

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION

LEDELL LEE

PETITIONER

v.

No. 5:01-cv-377-DPM

WENDY KELLEY, Director,
Arkansas Department of Correction

RESPONDENT

ORDER

Given the many filings in this case during the last few days, it sure seems like a pending matter within the meaning of Federal Rule of Civil Procedure 35(a). And Lee is the one who has recently added many pages arguing about *Atkins* issues, intellectual functioning, and neuropsychological test results. *E.g.*, No 162, 162-1 & 166 at 29–36. The Court was trying to be fair in giving the State access for testing. But, Lee is partly right on this: if his execution is stayed, then there will be time for the State's examination in due course; if things go the other way, then the testing will have needlessly taken up some of Lee's last days. Kelley is right, too, that this confluence of circumstances is partly the fruit of Lee's litigation strategy.

The Court has made no decision on, and awaits Kelley's responses to, the motions for funding, a stay, and Rule 60(b) relief. But the most prudent course, all material things considered, is to cancel tomorrow's examination

and testing. The raw-data issue, as well as the lawyer-presence issue, are moot for now. Lee's request for a Court-ordered visit with counsel is beyond the currently briefed disputes. The Court directs counsel to confer and try to resolve it.

* * *

Motion to reconsider, *No 171*, granted, though not for most of the reasons argued. Testing Orders, part of *No 168* and *No 170*, vacated.

So Ordered.

D.P. Marshall Jr.
D.P. Marshall Jr.
United States District Judge

18 April 2017