

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
PANAMA CITY DIVISION**

JACK RAY SMITH,

Petitioner,

v.

CASE NO. 5:11-cv-00275-MP-GRJ

EDWIN G. BUSS, Secretary Florida
Department of Corrections,

Respondent.

ORDER

This matter is before the Court on Respondent's Request for Interlocutory Appeal. (Doc. 27). The Court previously denied Respondent's Motion to Dismiss as Untimely, finding that petitioner's July 30, 2010 state habeas petition was properly filed for purposes of triggering the tolling provisions of § 2244(d)(2). (See doc. 25). Respondent now requests permission for interlocutory appeal to the United States Court of Appeals for the Eleventh Circuit and to stay this case. (See doc. 27). Respondent argues that interlocutory appeal is appropriate because this issue will likely be mooted by consideration of the petition on the merits. As such, there is a substantial likelihood that this issue—which is of considerable importance to respondent in this and other cases—will never be addressed and, therefore, not clarified by the Eleventh Circuit.

Despite these concerns, respondent has not met his burden for an interlocutory appeal. While this issue may “involve[] a controlling question of law as to which there is substantial ground for difference of opinion[,] . . . an immediate appeal from the order” would not “materially advance the ultimate termination of the litigation” 28 U.S.C. § 1292(b). In the instant case, immediate appeal would likely delay, not advance, ultimate termination of the

litigation.

Accordingly, it is hereby **ORDERED AND ADJUDGED**:

Respondent's Request for Interlocutory Appeal (doc. 27) is DENIED.

DONE AND ORDERED this 1st day of November, 2012

s/Maurice M. Paul
Maurice M. Paul, Senior District Judge