

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

**SHANE A. KITTERMAN,  
No. B-80577,**

**Petitioner,**

**vs.**

**Case No. 16-cv-1134-DRH**

**JASON GARNETT,**

**Respondent.**

**MEMORANDUM AND ORDER STAYING CASE**

**HERNDON, District Judge:**

This case is before the Court for consideration of whether to stay this case at the suggestion of the United States Court of Appeals, Seventh Circuit, upon remand of this matter. (Doc. 36). Also before the Court is Petitioner's motion for bond during stay (Doc. 38), filed on July 21, 2017.

Previously, Petitioner was ordered by this Court to submit a written status report including information on his now-pending appeals before the Illinois Appellate Court, Fifth District, and his projected release date, to aid the Court in considering whether to impose a stay of this habeas action. Petitioner provided this status information in his motion for bond. (Doc. 38, p. 10).

Petitioner has two active appeals. Appeal No. 5-15-0408 is a consolidated appeal from St. Clair County Case Nos. 12-CF-1204<sup>1</sup> and 15-CF-373 (convictions

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<sup>1</sup> The question of whether Petitioner had a duty to register as a sex offender in light of his 1995 plea agreement was noted by the trial court in No. 12-CF-1204 as an issue reserved for appeal. (*See* Doc. 9, p. 3).

pursuant to guilty pleas). Petitioner's brief was filed in April 2016, and the State's brief is due by August 31, 2017. (Doc. 38, p. 10). Appeal No. 5-15-0373 is from St. Clair County Case No. 14-CF-1422 (conviction after a jury trial). Petitioner's brief in that case is due to be filed on July 31, 2017. Petitioner states that his projected release date from the custody of the Illinois Department of Corrections is May 26, 2018. *Id.*

In light of the information confirming that Petitioner's appeals in state court are still pending, the undersigned finds it appropriate to stay this case pending the outcome of one or more of the appeals.

Turning to the motion for bond (Doc. 38), the grounds presented by Petitioner in arguing for his release during the pendency of this habeas action all relate to the merits of his claims in this case. Because a stay shall be imposed due to the fact that Petitioner has not yet exhausted his state court remedies following his criminal convictions, it would be inappropriate and inconsistent with the stay for the Court to order a response at this time or otherwise delve into the merits of Petitioner's challenge to the state court proceedings. *See* 28 U.S.C. § 2254(b)(1)(A); *Byers v. Basinger*, 610 F.3d 980, 985 (7th Cir. 2010) ("We cannot review a habeas petitioner's constitutional issue unless he has provided the state courts with an opportunity to resolve it 'by invoking one complete round of the state's established appellate review process.'" (quoting *O'Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999))).

Furthermore, while a federal court in habeas corpus cases has inherent power to admit an applicant to bail pending the final decision in his case, this is “a power to be exercised very sparingly.” *Cherek v. United States*, 767 F.2d 335, 337 (7th Cir. 1985).

The reasons for parsimonious exercise of the power should be obvious. A defendant whose conviction has been affirmed on appeal (or who waived his right of appeal, as by pleading guilty, or by foregoing appeal after being convicted following a trial) is unlikely to have been convicted unjustly; hence the case for bail pending resolution of his postconviction proceeding is even weaker than the case for bail pending appeal.

*Cherek*, 767 F.2d at 337.

Here, Petitioner was found guilty by a jury in one case, and pled guilty in the two other cases now on appeal. These factors weigh against a conclusion at this stage that he was “convicted unjustly.” Petitioner has not demonstrated any exceptional circumstances warranting his release before the Court can fully consider the merits of his petition or render a final decision in this case. Accordingly, the motion for bond shall be denied.

#### **Disposition**

**IT IS THEREFORE ORDERED** that this action is **STAYED** until further order of this Court.

**IT IS FURTHER ORDERED** that Petitioner **SHALL NOTIFY** the Court in writing when the Illinois Appellate Court, Fifth District, issues an order or opinion disposing of either of his pending appeals, within **14 days** of the date the order or opinion is entered, and shall **SUBMIT** a copy of the order or opinion issued by the

Appellate Court. The Court will then assess whether to lift the stay and whether further proceedings are appropriate.

**IT IS FURTHER ORDERED** that Petitioner **SHALL NOTIFY** the Court in writing if he is released from custody while this action is pending.

**IT IS FURTHER ORDERED** that Petitioner's motion for bond during stay (Doc. 38) is **DENIED**.

**IT IS SO ORDERED.**

**Dated: July 27, 2017**

*David R. Herndon*  
Digitally signed by  
Judge David R.  
Herndon  
Date: 2017.07.27  
12:24:05 -05'00'  
**United States District Judge**