

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FREDERICK TED SPENCER,

Petitioner,

Case No. 09-13362

v.

Honorable Patrick J. Duggan

DEBRA SCUTT,

Respondent.

_____/

**ORDER (1) GRANTING RESPONDENT'S MOTION FOR IMMEDIATE
CONSIDERATION (ECF NO. 31) AND (2) DENYING RESPONDENT'S
EMERGENCY MOTION TO STAY ORDER GRANTING PETITIONER'S
MOTION TO SET BAIL (ECF NO. 32)**

On February 6, 2013, this Court conditionally granted Petitioner Frederick Spencer's ("Petitioner") petition for writ of habeas corpus filed pursuant to 28 U.S.C. § 2254. Soon thereafter, Respondent appealed this Court's decision to the United States Court of Appeals for the Sixth Circuit. On March 22, 2013, this Court granted Respondent's motion for immediate consideration and motion to stay enforcement of the habeas judgment pending appeal in part. Specifically, the Court granted a stay with respect to its order that Petitioner be released from custody unless the State initiated a new trial within 180 days. Although Respondent made arguments pertaining to whether Petitioner should remain confined pending appeal, the Court deemed it prudent to refrain from addressing

any arguments pertaining to Petitioner's release unless and until Petitioner sought such relief. On April 22, 2013, Petitioner filed a motion to set bail. Respondent declined to respond to this motion.

After thoughtful consideration, this Court concluded that Petitioner was indeed entitled to be released pending appeal and issued an Opinion and a separate Order to this effect on September 25, 2013. The same day that the Court issued its Opinion and Order, Respondent filed a motion for immediate consideration (ECF No. 31) as well as an emergency motion to stay the Court's order granting Petitioner's motion to set bail (ECF No. 32). These motions are presently before the Court. For the reasons stated herein, the Court grants Respondent's Motion for Immediate Consideration but denies Respondent's Motion to Stay Order Granting Petitioner's Motion to Set Bail.

Without citation to a single legal authority, Respondent argues that this Court should stay execution of its Order granting Petitioner's release on bail because a Sixth Circuit panel is scheduled to hear oral argument on the habeas appeal on October 8, 2013, which is less than two weeks away, and "[a]n opinion is expected to issue not long thereafter." (Resp't's Mot. 2.) This argument is not well taken. Not only is the proximity of oral argument irrelevant to whether Petitioner is entitled to release, Respondent's prediction regarding when a decision will issue is just that: a prediction. Moreover, and as Petitioner points out in

responding to the pending motions, Respondent's motion to stay essentially asks this Court to revisit its analysis of the propriety of releasing Petitioner pending appeal. (Pet.'s Br. 1, ECF No. 33.) The Court will do no such thing. Not only did Respondent decline to respond to Petitioner's motion seeking release but Respondent has not argued that the decision granting Petitioner bail was an erroneous one.

Accordingly,

IT IS ORDERED that Respondent's Motion for Immediate Consideration (ECF No. 31) is **GRANTED**;

IT IS FURTHER ORDERED that Respondent's Emergency Motion to Stay Order Granting Petitioner's Motion to Set Bail is **DENIED**.

Date: September 30, 2013

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

Copies to:

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