



Case No.  
GWIN, J.

"[T]he first two factors ... are the most critical."<sup>5</sup> The party requesting the stay bears the burden of establishing that the stay is warranted.<sup>6</sup>

The Court is not persuaded that the relevant factors weigh in favor of issuing a stay.

First, Respondent Houk has not established that he has a strong likelihood of success on appeal. In support of his motion, Respondent argues the Court granted Jackson's habeas petitioner because the Court "concluded the Ohio courts erred in failing to apply the rule in *Davis v. Coyle*["<sup>7</sup>

Respondent is mistaken. The Court granted Jackson's petition because the Court, like the Sixth Circuit in *Davis*, found that "the Ohio Supreme Court's decision to prevent Jackson from presenting mitigating evidence at his resenting hearing 'was both an unreasonable application of the *Skipper* decision and contrary to the holding in that opinion and its antecedent cases."<sup>8</sup> More simply, the Court granted Jackson's petition because the Ohio Supreme Court's decision was an unreasonable application of and contrary to clearly established federal law as set out in binding Supreme Court precedent. This factor weighs against a stay.

Second, Respondent Houk has not established that he will be irreparably harmed without the stay. The Court believes it will be some time before Petitioner received a new mitigation hearing. If it appears the mitigation hearing will occur before the Sixth Circuit can issue a ruling on the appeal, Respondent can seek a state court continuance. This factor weighs against a stay.

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<sup>5</sup> [Ohio State Conference of N.A.A.C.P., 769 F.3d at 387.](#)

<sup>6</sup> *Id.*

<sup>7</sup> Doc. [83](#) at 2.

<sup>8</sup> Doc. [80](#) at 18–19.

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Third, Respondent Houk has not established that a stay will not substantially injure Petitioner Jackson. As Petitioner points out, a stay will deprive Jackson the opportunity to develop new mitigation evidence by allowing him to reenter the prison's general population.<sup>9</sup> This factor weighs against a stay.

Finally, Respondent Houk has not established that the public interests supports a stay. This factor is neutral.

## II. Conclusion

For the foregoing reasons, the Court **DENIES** Respondent's motion to stay the Court's remand order.

IT IS SO ORDERED.

Dated: March 25, 2021

*s/ James S. Gwin*  
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JAMES S. GWIN  
UNITED STATES DISTRICT JUDGE

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<sup>9</sup> Doc. [85](#) at 4–5.