

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MARTIN CRISTIN : CIVIL ACTION
a/k/a DANNY STANTON :
 :
v. :
 :
EDWARD BRENNAN, Superintendent, :
THE ATTORNEY GENERAL OF THE STATE :
OF PENNSYLVANIA and THE DISTRICT :
ATTORNEY FOR PHILADELPHIA COUNTY : NO. 97-3856

MEMORANDUM AND ORDER

Fullam, Sr. J.

June , 2000

On April 11, 2000, I ruled favorably upon petitioner's application for a writ of habeas corpus. I directed that the writ issue, and that the petitioner be released from custody, unless the respondents caused him to be retried, in accordance with Constitutional standards, within 120 days. The Philadelphia District Attorney's Office has filed a Notice of Appeal from that Order, and has now presented me with an application for a stay of that Order pending the outcome of such appeal.

In order to justify a stay of my Order, the Commonwealth respondents must show a likelihood of success on appeal, irreparable injury absent a stay, lack of substantial prejudice to the petitioner if a stay were to be granted, and a likelihood that the public interest would be advanced by a stay of the Order. Hilton v. Braunskill, 481 U.S. 770, 776 (1987). I do not believe those requirements are met in the present case.

As discussed in my April 11, 2000 decision, I am convinced that the petitioner has already been subjected to an egregious miscarriage of justice: He was tried in absentia because of his ethnicity; he was, as a practical matter, unrepresented by counsel at every stage; he was sentenced to a term of 15 to 30 years for engaging in fortune telling and committing frauds aggregating approximately \$20,000; and he was not accorded a right of allocution. Petitioner has already served a great deal longer than a "normal" sentence for like crimes (in excess of seven years to date), I conclude that the petitioner would be very severely prejudiced by being forced to serve additional time during the pendency of an appeal. I am satisfied that these injustices would have been corrected long ago by the State Courts, if petitioner had had Constitutionally adequate representation; considerations of comity are not frustrated by denial of the stay requested.

An Order follows.

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ORDER

AND NOW, this day of June 2000, upon consideration of respondents' Motion for a Stay of this Court's Order of April 11, 2000 Pending Appeal Pursuant to Fed.R.Civ.P. 62(d), IT IS ORDERED:

That the motion for a stay is DENIED.

John P. Fullam, Sr. J.