

IN THE SUPREME COURT, STATE OF WYOMING

2003 WY 69

April Term, A.D. 2003

May 29, 2003

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|-----------------------|---|--------------------|
| JAMES MARTIN HARLOW, |) | |
| |) | |
| Appellant |) | |
| (Defendant), |) | |
| |) | |
| v. |) | Nos. 99-58, 59, 60 |
| |) | |
| THE STATE OF WYOMING, |) | |
| |) | |
| Appellee |) | |
| (Plaintiff). |) | |

ORDER ISSUING MANDATE, SETTING NEW DATE FOR EXECUTION OF SENTENCE, AND STAYING EXECUTION OF SENTENCE PENDING FURTHER PROCEEDINGS

James Martin Harlow, aka Thorvaldr Sigwolf, was convicted by a jury of capital murder charged under Wyo. Stat. Ann. § 6-2-101(a) (Michie 1997), was sentenced to death by a jury under Wyo. Stat. Ann. § 6-2-102 (Michie 1997), and the trial court entered judgment and sentence on December 7, 1998. Mr. Harlow timely filed a notice of appeal, and his appeal was docketed in this Court on February 23, 1999. The sentence of death was stayed pending appeal. W.R.A.P. 5.01(a). This Court affirmed Mr. Harlow’s judgment and sentence on April 14, 2003, and remanded the case to the trial court for the limited purpose of vacating the suspension of the sentence of death and the setting of a specific date for execution of that sentence.

Before the mandate issued, however, Mr. Harlow, on April 29, 2003, timely filed in this Court a petition for rehearing. W.R.A.P. 9.07. That filing had the effect of suspending proceedings under this Court’s decision until this Court decided the petition. W.R.A.P. 9.08. While Mr. Harlow’s petition for rehearing was pending, Mr. Harlow filed in this Court a motion for order of stay on April 29, 2003. In that motion, Mr. Harlow petitioned this Court “to continue the existing order of stay until such time as he has exhausted the remedies available to him at law to seek direct and collateral review of his judgment and capital

sentence.” In this regard, Mr. Harlow in his motion informs this Court that he intends to seek a writ of certiorari by timely applying to the United States Supreme Court in which application he will ask that Court to review the ultimate determination of his appeal by this Court. In his motion, Mr. Harlow implies that he may also seek a remedy under Wyo. Stat. Ann. § 7-14-101(Michie 1997) for violation of constitutional rights abridged during the proceedings which resulted in his judgment and conviction. In his motion, Mr. Harlow further informs this Court that he expects to pursue relief in the form of a petition for a writ of habeas corpus under 28 U.S.C. § 2254, after state review of his conviction and capital sentence is truly complete, or deemed to be unavailable.

In addition to his request in his motion that this Court continue the existing order of stay until he has exhausted the above-mentioned remedies, Mr. Harlow requests that this Court hold in abeyance the mandate to be issued in this case, at least until such time as direct review is completed. Alternatively, Mr. Harlow requests that this Court, upon its final disposition of this case, and in the event that it does not upon rehearing vacate Mr. Harlow’s capital sentence in favor of a life sentence, direct the lower court to enter an order of stay of execution pending the completion of direct and collateral review available to Mr. Harlow and further order the State not to seek a warrant of execution during the pendency of Mr. Harlow’s claims on direct and collateral review.

On May 20, 2003, this Court entered its order denying Mr. Harlow’s petition for rehearing. This Court now shall dispose of Mr. Harlow’s pending motion for order of stay. This Court considers it inappropriate to enter an order of stay as broad as Mr. Harlow seeks. This Court has determined that the better practice at this time is to employ a narrower approach which will promote the timely handling of those remedies that Mr. Harlow actually pursues. Under this approach, this Court, having denied Mr. Harlow’s petition for rehearing, shall issue the mandate, vacate the suspension of the sentence of death, set a specific date for execution of that sentence, and then stay the execution of that sentence pending Mr. Harlow’s timely application to the United States Supreme Court seeking a writ of certiorari, the time for filing a petition for writ of certiorari with that Court being ninety (90) days from the date of this Court’s issuance of mandate. Having this Court set a new date of execution rather than remand to the trial court to set a new date of execution may help avoid some inherent delays in this case. This Court does not foreclose, however, this Court’s remanding to the trial court to set a new date of execution if such course of action becomes appropriate in this case in the future. This Court shall further order Mr. Harlow’s counsel to promptly inform this Court and the State of Wyoming of counsel’s timely filing of application to the United States Supreme Court for a writ of certiorari asking that Court to review this Court’s determination of his appeal. This Court shall further order Mr. Harlow’s counsel to promptly inform this Court and the State of Wyoming when the United States Supreme Court has disposed of Mr. Harlow’s petition for writ of certiorari. Upon that Court’s disposition of Mr. Harlow’s petition for writ of certiorari, this Court may make such further order as may then appear to be necessary and appropriate, if it still retains jurisdiction.

It is, therefore, ORDERED that the Motion for Stay filed April 29, 2003, be, and is hereby granted in part and denied in part;

It is further ORDERED that, this Court having denied Mr. Harlow's petition for rehearing by order dated May 20, 2003, the mandate shall issue forthwith on the date of this order;

It is further ORDERED that the opinion published in this case on April 14, 2003, *Harlow v. State*, 2003 WY 47, be, and it is hereby, modified by rescinding the remand to the trial court for the limited purpose of vacating the suspension of the sentence of death and the setting of a specific date for execution of that sentence;

It is further ORDERED that the suspension of the sentence of death is hereby vacated;

It is further ORDERED that the new date for execution of the sentence of death is July 18, 2003, a date more than thirty (30) days from the date of this order;

It is further ORDERED that the execution of that sentence of death is hereby stayed pending Mr. Harlow's timely application to the United States Supreme Court for a writ of certiorari, the time for Mr. Harlow's filing a petition for writ of certiorari with the United States Supreme Court being ninety (90) days from the date of this order;

It is further ORDERED that Mr. Harlow's counsel promptly notify this Court and the State of Wyoming of counsel's timely filing of application to the United States Supreme Court for a writ of certiorari asking that Court to review this Court's determination of his appeal;

It is further ORDERED that Mr. Harlow's counsel promptly inform this Court and the State of Wyoming when the United States Supreme Court has disposed of Mr. Harlow's petition for writ of certiorari;

It is further ORDERED that this order be published in Pacific Reporter Third.

DATED this 29th day of May, 2003.

BY THE COURT:*

**/s/ Michael Golden
MICHAEL GOLDEN
Justice**

* Justices Golden, Lehman, and Voigt and District Judges Sullins and Burke sitting by appointment