

FILED: January 12, 2021

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

---

No. 20-15  
(3:92-cr-00068-DJN-2)

---

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

COREY JOHNSON, a/k/a O, a/k/a CO

Defendant - Appellant

---

No. 21-1  
(3:92-cr-00068-DJN-2)  
(3:20-cv-00957-DJN)

---

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

COREY JOHNSON, a/k/a O, a/k/a CO

Defendant - Appellant

-----  
THE CONSTITUTION PROJECT AT THE PROJECT ON GOVERNMENT  
OVERSIGHT

Amicus Supporting Appellant

---

No. 21-2  
(3:92-cr-00068-DJN-2)

---

In re: COREY JOHNSON, a/k/a O, a/k/a CO

Movant

---

O R D E R

---

Upon consideration of submissions relative to the motions for stay of execution filed in Case No. 20-15, *United States v. Corey Johnson*, Case No. 21-1, *United States v. Corey Johnson*, and Case No. 21-2, *In re: Corey Johnson*, the court denies the motions for stay of execution.

In No. 20-15, Judge Wilkinson and Judge Floyd voted to deny the motion for stay, and Judge Motz voted to grant the motion.

In Nos. 21-1 and 21-2, Judge Wilkinson, Judge Motz, and Judge Floyd all voted to deny the motions for stay of execution.

Judge Wilkinson wrote a separate opinion. Judge Motz wrote a separate opinion, concurring in the denial of the motions in No. 21-1 and No. 21-2 and dissenting from the denial of the motion in No. 20-15.

For the Court

/s/ Patricia S. Connor, Clerk

WILKINSON, Circuit Judge:

I vote to deny a stay of execution and to deny all the subsidiary motions directed toward that singular end. The Supreme Court has warned against this flurry of last-minute motions designed to achieve a stay by virtue of allowing the courts severely limited consideration time. *See Bucklew v. Precythe*, 139 S. Ct. 1112, 1134 (2019) (instructing courts to “police carefully against attempts to use [] challenges as tools to interpose unjustified delay” and explaining that stay requests can be denied if they are filed at the last minute). “Last-minute stays . . . should be the extreme exception, not the norm.” *Barr. v. Lee*, 140 S. Ct. 2590, 2591 (2020) (internal quotation marks omitted). Here, Johnson had ample time to raise the issues that are only now advanced before us, giving us (and the Supreme Court) just a few days before the scheduled execution date. The very numerosity of filings, both statutory and constitutional, betrays a manipulative intention to circumvent not only the strictures of AEDPA but the Supreme Court’s warnings against procedural gamesmanship designed to bring the wheels of justice to a halt. We should not reward such dilatory tactics.

It is disheartening to say the least to watch the Supreme Court’s warnings disregarded. “Both the State and the victims of crime have an important interest in the timely enforcement of a sentence.” *Hill v. McDonough*, 547 U.S. 573, 584 (2006). Yet these interests have been ignored while Johnson’s case has dragged on through the federal system for decades. Now Johnson seeks more delay, assaulting us with a barrage of last-minute claims, focusing primarily on the contention that he is intellectually disabled and

cannot be executed under *Atkins v. Virginia*, 536 U.S. 304 (2002), or the Federal Death Penalty Act of 1994, 18 U.S.C. § 3596(c).

There has been no dearth of process here, and we squarely rejected his contention that he is intellectually disabled under *Atkins*. In 1993, a jury convicted Johnson of twenty-seven counts, including seven murders. At sentencing, the defense retained an eminently qualified University of Virginia psychologist, who gave a lengthy presentation to the jury showing that Johnson had experienced a difficult childhood and suffered from a learning disability, though he had to concede that Johnson was not intellectually disabled. Unpersuaded, the jury recommended seven death sentences. After a failed direct appeal, Johnson brought his first habeas petition in 1998, arguing *inter alia* that he could not be executed because he was intellectually disabled. The district court denied the petition and we affirmed, holding that he was not intellectually disabled and specifically rejecting his argument that he could not be executed under *Atkins*, the case Johnson now rests his hopes upon. *United States v. Roane*, 378 F.3d 382, 408-09 (4th Cir. 2004).

Since then, there have been seven more habeas petitions, accompanied by endless motions, district court decisions, rejected appeals, and denied certiorari petitions. Johnson has raised dozens of other claims that many different judges have rejected as meritless. The courts have given exhaustive attention to petitioner's case, and at some point allowing these proceedings to travel further along this indefinite and interminable road brings the rule of law into disrepute.

I should say finally that there is not the slightest question of innocence here. Johnson has committed multiple murders of a horrific nature, and even in the depressing annals of

capital crimes, his case stands out. As Judge Novak recounted below, Johnson is a brutal “serial killer” who was involved in at least ten murders as an enforcer for a large-scale narcotics operation. *United States v. Johnson*, No. 3:92cr68, 2021 WL 17809, at \*1-2 (E.D. Va. Jan. 2, 2021). The time has long since passed for the judgment of the jury and that of so many courts thereafter to be carried out.

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.