

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 10-3292

Roderick Nunley,

Appellee,

v.

Michael Bowersox,

Appellant.

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* Appeal from the United States

* District Court for the

* Western District of Missouri.

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* [UNPUBLISHED]

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Submitted: October 19, 2010

Filed: October 19, 2010

Before MURPHY, BYE, and MELLOY, Circuit Judges.

PER CURIAM.

On October 18, 2010, the district court¹ granted Roderick Nunley's motion to stay execution pending the resolution of his habeas case because "there is an issue which required further development," namely "[i]f the right to have a jury determine his punishment did not exist when [Nunley] was originally sentenced to death, but this right was subsequently established by Ring and found to be retroactive by the

¹The Honorable Fernando J. Gaitan, Jr., Chief Judge, United States District Court for the Western District of Missouri.

Missouri Supreme Court in Whitfield, is [Nunley]’s waiver still valid?’² The government appeals the stay. We deny the motion to vacate the stay.

We generally review an order to grant a stay of execution for abuse of discretion. Jones v. Hobbs, 604 F.3d 580, 581 (8th Cir. 2010); Nooner v. Norris, 491 F.3d 804, 807 (8th Cir. 2007). After carefully reviewing the submissions of the parties and the well-reasoned district court opinion, we can find no abuse of discretion. While we express no opinion on the issue of whether the Missouri Supreme Court unreasonably applied controlling Supreme Court precedent, we do believe the issue is sufficiently meritorious to say that the district court did not abuse its discretion to grant a stay to fully develop the record and decide the issue.

²In Ring v. Arizona, 536 U.S. 584 (2002), the United States Supreme Court recognized the right to a jury determination of all facts necessary to impose the death penalty. In State v. Whitfield, 107 S.W.3d 253 (Mo. Banc 2003), the Missouri Supreme Court made Ring retroactive under state law.