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2:16-cv-03040-JLL BERGRIN v.
UNITED STATES OF AMERICA

HABEAS,PLO

U.S. DISTRICT COURT
DISTRICT OF NEW JERSEY
NOV 15 2018

U.S. District Court

District of New Jersey [LIVE]

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Case Name: BERGRIN v. UNITED STATES OF AMERICA

Case Number: 2:16-cv-03040-JLL

Filer:

Document Number: 47

Docket Text:

ORDER, that Petitioner shall show cause within thirty days why this Court should not stay this § 2255 proceeding pending the outcome of his Rule 33 motion in his underlying criminal matter, and a failure by Petitioner to object to a stay shall result in this matter being stayed; and the Clerk of the Court shall serve a copy of this Order upon Respondent electronically and upon Petitioner by regular mail; etc. Signed by Chief Judge Jose L. Linares on 12/14/2018. (sms)

2:16-cv-03040-JLL Notice has been electronically mailed to:

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NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

PAUL W. BERGRIN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Civil Action No. 16-3040 (JLL)

ORDER

LINARES, Chief District Judge

IT APPEARING THAT:

1. In April 2016, Petitioner, Paul Bergrin, was granted an extension of time within which to file a motion for a new trial based on allegedly newly-discovered evidence in his criminal docket. (Docket No. 09-369 at ECF No. 626; *see also id.* at ECF No. 624 (Bergrin's underlying request for an extension)). Petitioner thereafter filed his motion for a new trial in June 2016. (Docket No. 09-369 at ECF No. 630). Following several extensions of time, the briefing of that motion became complete in December 2018. (Docket No. 09-369 at ECF Nos. 681-683).

2. While that briefing was being conducted, Petitioner filed his motion to vacate sentence in this matter. (ECF No. 1). Following several extensions for the parties, this matter has been extensively briefed and appears to have concluded with Petitioner's most recent addendum having been filed in September 2018 (ECF No. 45), and the Government's further reply thereto having been filed in November 2018. (ECF No. 46.)

3. In the answer to Petitioner's § 2255 motion, the Government requested that this Court "resolve [Petitioner's] Rule 33 motion *before* [this] § 2255 motion" as there are numerous points of overlap between the two motions, most notably the newly-discovered evidence claims that Petitioner has presented in both motions. (ECF No. 27 at 24 n. 6). Specifically, the Government notes that a decision by this Court on those newly-discovered evidence claims in resolving the Rule 33 motion would potentially preclude Petitioner from relief on those same claims in this matter. (*Id.* (citing *LoCascio v. United States*, 267 F. Supp. 2d 306, 310 (E.D.N.Y. 2003))). This Court construes this as a request that this Court stay this matter pending resolution of the Rule 33 motion.

4. Petitioner himself explicitly noted the overlap between the two motions in his initial reply in this matter, going so far as to attempt to incorporate by reference his Rule 33 motion into his reply brief (*see* ECF No. 31 at 12), and he has made several filings since that time. However, Petitioner has never directly responded to the request of the Government that this matter be stayed pending the outcome of the Rule 33 motion.

5. District Courts have within their discretion the authority to temporarily stay matters where the facts or background of an individual case so warrant. *See, e.g., Nicholas v. Wyndham Intern., Inc.*, 149 F. App'x 79, 81 (3d Cir. 2005) (citing *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936) ("[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment, which must weigh the competing interests and maintain an even balance.")). Thus, "a court may hold one lawsuit in abeyance to abide the outcome of another which may substantially affect it or be

dispositive of the issues.” *Bechtel Corp. v. Local 215, Laborers’ Int’l Union of N. Am., AFL-CIO*, 544 F.2d 1207, 1215 (3d Cir. 1976).

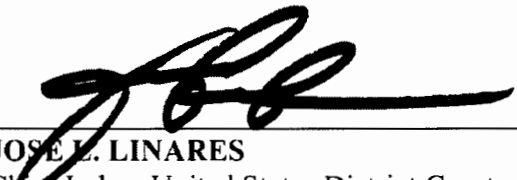
6. Absent objection from Petitioner, this Court is inclined to grant the Government’s request and stay this matter pending the outcome of Petitioner’s Rule 33 motion. As the parties have noted in their briefing, there is considerable overlap between the claims raised in Petitioner’s two motions – many of the grounds for a new trial that Petitioner has presented in his Rule 33 motion are also the underpinnings of Petitioner’s *Brady* and related claims in his § 2255 motion. Likewise, any decision in Petitioner’s favor on the Rule 33 motion would potentially moot the § 2255 motion, while a decision adverse to Petitioner on his newly-discovered evidence claims could potentially preclude him from relief on his related *Brady* and innocence claims raised in his § 2255 motion. It thus appears that a stay would be warranted in this matter. *Bechtel Corp.*, 544 F.2d at 1215; *Nicholas*, 149 F. App’x at 81.

7. Because Petitioner has not responded to the Government’s request for a stay here, and because this Court finds that it would be in the interests of justice to permit Petitioner to respond to this request, this Court will permit Petitioner to raise any objection within thirty days that he may have to a stay of this matter pending a decision on his Rule 33 motion. Should Petitioner consent to the stay or fail to file any objection he may have within that time period, the stay shall be entered.

IT IS THEREFORE on this **14~~th~~** day of December, 2018,

ORDERED that Petitioner shall show cause within thirty days why this Court should not stay this § 2255 proceeding pending the outcome of his Rule 33 motion in his underlying criminal matter, and a failure by Petitioner to object to a stay shall result in this matter being stayed; and it is further

ORDERED that the Clerk of the Court shall serve a copy of this Order upon Respondent electronically and upon Petitioner by regular mail.



JOSE L. LINARES
Clerk Judge, United States District Court