

(ORDER LIST: 577 U.S.)

TUESDAY, NOVEMBER 3, 2015

ORDER IN PENDING CASE

15A473      JOHNSON, ERNEST L. V. LOMBARDI, GEORGE A., ET AL.

The application for stay of execution of sentence of death presented to Justice Alito and by him referred to the Court is treated as an application for stay pending appeal in the Eighth Circuit. The application is granted pending the disposition of petitioner's appeal. Petitioner's complaint alleges that Missouri's method of execution violates the Eighth Amendment as applied to a person with his particular medical condition. A supporting affidavit by a medical expert states that "[a]s a result of Mr. Johnson's brain tumor, brain defect, and brain scar, a substantial risk of serious harm will occur during his execution as result of a violent seizure that may be induced by [the] Pentobarbital injection." Because petitioner's complaint was dismissed for failure to state a claim, the State was not required to submit any evidence refuting this allegation. In the currently pending appeal, the Court of Appeals will be required to decide whether petitioner's complaint was properly dismissed for failure to state a claim or whether the case should have been permitted to progress to the summary judgment stage.