

IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE

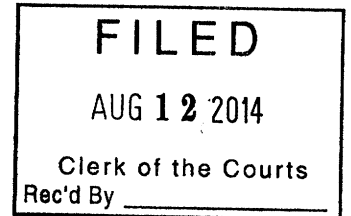
**STATE OF TENNESSEE v. LEE HALL a/k/a LEROY HALL, JR.**

**Criminal Court for Hamilton County  
Nos. 188000 & 188001**

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**No. E1997-00344-SC-DDT-DD**

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**ORDER**

On October 3, 2013, the State of Tennessee filed a Motion to Set Execution Date for Leroy Hall, Jr. The State alleged that Mr. Hall had completed the standard three-tier appeals process and that an execution date should therefore be set under Tennessee Supreme Court Rule 12.4(A).

On July 18, 2014, Mr. Hall filed a Response in Opposition to the State's Motion, alleging that the Motion should be denied because: (1) he suffers from cognitive impairments that were not presented to the jury and not considered by any court; (2) the jurors in his case were forced to choose between life with parole and the death penalty, unconstitutionally skewing the jury's decision in favor of the death penalty; (3) his sentence is disproportionate; (4) he has been a model prisoner since coming into state custody in 1991; (5) there is an ongoing challenge in state courts to the constitutionality of the Department of Correction's newly adopted one-drug lethal injection protocol, and no controlling state law on the constitutionality of this protocol; and (6) Tennessee Code Annotated section 40-23-114(e), as amended by chapter 1014 of the Public Acts of 2014, effective July 1, 2014, which provides for execution by electrocution if lethal injection is declared unconstitutional or the prescribed lethal injection drugs are unavailable, is unconstitutional. Mr. Hall also requested that this Court issue a certificate of commutation to the Governor.

Contrary to Mr. Hall's claim that no court has ever considered his cognitive impairments, this issue was addressed by the post-conviction trial court, by the Court of Criminal Appeals on appeal from the denial of post-conviction relief, and by the United States District Court for the Eastern District of Tennessee at the hearing on his federal habeas corpus petition. All three courts rejected this claim because the experts who testified in the state post-conviction proceedings were unable to state definitively that Mr. Hall lacked the

ability to form the requisite intent to kill due to a mental disease, a mental defect, or intoxication.

Mr. Hall's argument that his sentence is unconstitutional because only two sentencing options—life with the possibility of parole or death—were statutorily available at his sentencing hearing has been repeatedly rejected by this Court. *See State v. Odom*, 137 S.W.3d 572, 596-97 (Tenn. 2004); *State v. Austin*, 87 S.W.3d 447, 481-82 (Tenn. 2002) (Appendix); *State v. Keen*, 31 S.W.3d 196, 213-19 (Tenn. 2000); *State v. Bush*, 942 S.W.2d 489 (Tenn. 1997).

Mr. Hall's claim that his sentence is disproportionate has already been rejected. On direct appeal, this Court conducted an extensive comparative proportionality review and upheld Mr. Hall's death sentence. *State v. Hall*, 958 S.W.2d 679, 698-702 (Tenn. 1997).

Mr. Hall's assertion that he has been a model prisoner while in State custody does not constitute a basis for denying the State's Motion, although nothing precludes Mr. Hall from advancing this assertion in support of a request for executive clemency.

Mr. Hall is correct that a declaratory judgment action raising state and federal constitutional challenges to the Department of Correction's newly adopted one-drug lethal injection protocol is pending before the Chancery Court for Davidson County. *West et al. v. Schofield et al.*, No. 13-1627-I (Davidson Chancery, filed Nov. 20, 2013). Mr. Hall is a party to that litigation; however, its pendency does not preclude this Court from granting the State's Motion. *See, e.g., Donald Wayne Strouth v. State*, No. E1997-00348-SC-DDT-DD (Tenn. Apr. 8, 2014) (Order Setting Execution Date).

Furthermore, Tennessee Supreme Court Rule 12.4(A) does not provide a procedural vehicle for litigating Mr. Hall's challenge to the constitutionality of Tenn. Code Ann. § 40-23-114(e). We note that electrocution was the only method of execution in use at the time Mr. Hall received a sentence of death, and this Court rejected Mr. Hall's challenge to its constitutionality in his direct appeal. *Hall*, 958 S.W.2d at 719 (appendix); *see also State v. Suttles*, 30 S.W.3d 252, 263-64 (Tenn. 2000) (collecting cases rejecting challenges to the constitutionality of electrocution as a method of execution). To the extent Mr. Hall is attempting to raise a new constitutional challenge to electrocution or lethal injection, this Court is not the proper forum in which to initiate such a claim. This Court's jurisdiction is appellate only. Tenn. Code Ann. § 16-3-201. As we explained almost twenty years ago, it is "inappropriate" for this Court to consider factual matters "outside the record that have not been presented to an inferior court." *State v. Shepherd*, 902 S.W.2d 895, 906 (Tenn. 1995).

Having considered the State's Motion to Set Execution Date and Mr. Hall's Response,

this Court finds that Mr. Hall has presented no legal basis for denying the State's Motion to Set Execution Date. Accordingly, the State's Motion is GRANTED. We further conclude that Mr. Hall has failed to allege extenuating circumstances warranting issuance of a certificate of commutation. Thus, Mr. Hall's request for a certificate of commutation is DENIED.

It is, therefore, hereby ORDERED, ADJUDGED and DECREED by this Court that the Warden of the Riverbend Maximum Security Institution, or his designee, shall execute the sentence of death as provided by law on the twelfth day of January, 2016, unless otherwise ordered by this Court or other appropriate authority.

Counsel for Mr. Hall shall provide a copy of any order staying execution of this order to the Office of the Clerk of the Appellate Court in Nashville. The Clerk shall expeditiously furnish a copy of any order of stay to the Warden of the Riverbend Maximum Security Institution.

PER CURIAM