

**IN THE CRIMINAL COURT
OF DAVIDSON COUNTY, TENNESSEE**

ABU-ALI ABDUR'RAHMAN)	
Petitioner)	Post-Conviction No. _____
)	DEATH PENALTY CASE
v.)	Trial Case No. 87-W-417)
)	
STATE OF TENNESSEE)	Execution set April 10, 2002 at 1:00am
Respondent)	

MOTION FOR A STAY OF EXECUTION

The Petitioner Abu-Ali Abdur' Rahman moves this Court to stay his impending execution set for April 10, 2002 at 1:00 a.m. on the grounds that he has presented a colorable claim in his motion to reopen his post-conviction petition and time is needed to review the claims on the merits. In support of this motion, Mr. Abdur' Rahman would show the following:

- a. He has submitted six colorable claims which warrant reopening his post-conviction petition:
- b. The complete failure of counsel to present mitigating evidence warrants a new sentencing hearing since it violates Article I, §§ 9 and 16 of the Tennessee Constitution;
- c. He was arguably denied his right to due process and a jury trial since his aggravating circumstances were not charged in the indictment and deserves a stay of execution pending the outcome of the U.S. Supreme Court in the decision Ring v. Arizona, U.S. No. 01-488, cert. granted, 534 U.S. ___, 122 S. Ct. 865 (2002) and the Tennessee Supreme Court's decision in State v. Dellinger, No. E1997-00196- SCT-R3-DD.(1) The United States Supreme Court has granted stays of execution based upon the pendency of Ring in Florida v. Amos King (No. 01-7804) and Florida v. Linroy Bottoson (No. 01-8099).
- d. The prosecution withheld exculpatory evidence.
- e. The jury considered an unconstitutional "heinous, atrocious and cruel" aggravating factor.
- f. The jury received an unconstitutional instruction on the meaning of reasonable doubt; and
- g. Lethal injection violates the prohibition against cruel and unusual punishments under the Eighth Amendment of the United States Constitution and Article I, § 16 of the Tennessee Constitution.
- h. Justice demands that a stay be granted so that these claims can be fully examined and a determination made concerning the merit of each. Cf. Lonchar v. Thomas, 517 U.S. 314, 116 S.Ct. 1293, 134 L.Ed.2d 440 (1996) (Courts must grant a stay if a petition cannot be ruled on on the merits before a scheduled execution.).

Respectfully submitted,

_____ Donald E. Dawson, BPR 10723

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(1) Both the Ring and Dellinger cases will address the issue of whether Apprendi v. New Jersey, 530 U.S. 466 (2000), applies to capital cases. Apprendi held that all factors used to enhance sentencing, excluding a prior conviction, must be charged in an indictment, submitted to a jury and proven beyond a reasonable doubt. Id.