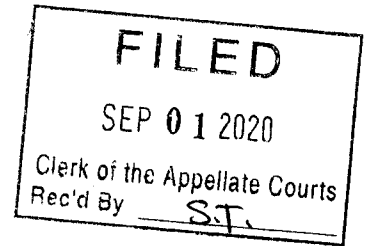


IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE



STATE OF TENNESSEE,	)	
	)	
Movant,	)	KNOX COUNTY
v.	)	No. M2020-01156-SC-DPE-DD
	)	Death Penalty Case
CHRISTA GAIL PIKE,	)	
	)	Trial Court No. 58183A
Defendant.	)	

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**DEFENDANT'S UNOPPOSED MOTION  
FOR EXTENSION OF TIME  
TO RESPOND TO MOTION TO SET EXECUTION DATE**

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The State of Tennessee has filed a motion pursuant to Tenn. Sup. Ct. R. 12.4(A) to set an execution date for Christa Gail Pike. Ms. Pike, through undersigned counsel, respectfully moves for a ninety-day extension of time to respond to the State's motion to set an execution date up to, and including, December 7, 2020.<sup>1</sup> This additional time will not prejudice the State, but it will prevent irreparable harm that would result from forcing Defendant to file a response without affording an adequate opportunity to explain why an execution date should not be scheduled. As shown below, the present facts and circumstances require additional time for counsel to adequately discharge their duties and competently respond to the State's motion. The State has said it will not file any opposition to Ms. Pike's motion.

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<sup>1</sup>Tenn. Sup. Ct. R. 12.4(A) provides a ten-day period of time to file a response in opposition to a motion to set an execution date. The response to the State's motion is currently due on September 8, 2020.

Rule 12.4(A) directs that a response should assert “any and all” legal and factual reasons why an “execution date should be delayed, why no execution date should be set, or why no execution should occur, including a claim that the prisoner is not competent to be executed . . . , [and] a request for certificate of commutation pursuant to Tenn. Code. Ann. § 40-27-106,” or proof of “a likelihood of success on the merits” of any pending state or federal court collateral litigation. Tenn. Sup. Ct. R. 12.4(A). A response under Rule 12.4 requires substantial time and energy to prepare adequately since it can include significant considerations never before brought to this Court’s attention. In addition, this is the first time Ms. Pike has faced an execution date. As explained below, counsel requires additional time to prepare a response.

**I. Counsel for Ms. Pike is unable to provide a careful, well-prepared response within the ten-day period because he represents a federal death row inmate with an imminent execution date.**

Undersigned counsel is also counsel for federal death row inmate William Emmett Lecroy, Jr. Mr. Lecroy faces an execution date of September 22, 2020. Mr. Lecroy received only 53 days’ notice of his execution date. Counsel must investigate, prepare, and present a case for clemency on his behalf, as well as address other legal issues that may arise. In addition, counsel may be required to travel out of state to attend to matters in Mr. Lecroy’s case, as the criminal conviction took place in Georgia and federal death row is located in Terra Haute, Indiana. Due to the short notice period, counsel is required to spend all of his working hours completing multiple tasks related to Mr. Lecroy’s case. Counsel will not be able to turn his attention to Ms. Pike’s case until after September 22, 2020.

## **II. Substantial work must be completed to prepare an answer to the State's motion.**

Capital defendants are entitled to adequate and continuous representation as set forth in 18 U.S.C. § 3599(a)(1)(B), (a)(2), & (e). This statutory right to legal representation includes the assistance of counsel for “all available post-conviction process, together with applications for stays of execution and other appropriate motions and procedures, and ... competency proceedings and proceedings for executive or other clemency[.]” 18 U.S.C. § 3599(e). The right to counsel is meaningless without sufficient time for counsel to meaningfully prepare and present a defendant's case. *McFarland v. Scott*, 512 U.S. 849, 857-58 (1994). Due Process, therefore, requires that counsel for Ms. Pike be afforded an adequate amount of time to present a thoughtful response explaining “any and all” reasons why an execution date should not be set or why a certificate for commutation should issue.

Before a response can be filed, counsel must meet and consult with Ms. Pike as well as assess any need for a mental health evaluation. Since approximately mid-March, the prison has restricted visitation because of the global COVID-19 pandemic. Counsel has not met in-person with Ms. Pike since September 2019 and has only been able to meet by videoconference or telephone as all legal visits have been suspended as a result of the COVID-19 pandemic. However, should counsel be allowed to visit Ms. Pike in person, counsel is unable to begin making travel and visitation arrangements until after September 22, 2020, as the undersigned represents the aforementioned client with an imminent federal execution date of

September 22, 2020. In addition, after any visitation, counsel will require some time to conduct a fact investigation and consult with any experts on matters that are relevant to meeting the obligations set forth in Rule 12.4. An adequate investigation into matters relevant to the rule cannot be conducted unless additional time is granted.

As a final consideration, any response time allotted should compensate for the fact that Rule 12.4 does not allow for a mailbox rule. The response must be received by the Court in Nashville on or before the due date. Undersigned counsel will attempt to file this motion with the Court through its electronic filing system, but it is unclear whether electronic filing is available for this case. Should electronic filing be unavailable, time is required to drive to Nashville in order to deliver the response to the Court for filing on the day it is due. Defendant should not be penalized with less time (in the amount of one day) simply because her counsel is not located in the same geographic area of the state as the Court.

**III. The State does not oppose an extension and an extension of time will not prejudice the State**

Counsel for the State was consulted about this request and will not file any opposition to an extension of ninety (90) days. Nevertheless, it bears noting that an extension of the time for filing a response will not impact the State's interest in seeking an execution date for Ms. Pike. The reality is that there are already execution dates in Tennessee scheduled into the year 2021. Should the Court decide to grant the State's motion, any execution date would presumably not be scheduled until months after the date Defendant seeks to file her response.

An extension of time will not prejudice the State but it is critical to Defendant's ability to provide an adequate response. A ninety-day extension will allow counsel to meet the pre-existing, unmovable deadlines necessitated by Mr. LeCroy's execution date. After Mr. LeCroy's execution date, counsel will then have two months to devote to investigating, researching, and preparing a response to the State's motion in Ms. Pike's case.

### CONCLUSION

For the reasons stated above, it is respectfully requested that the Court grant this motion and permit an additional ninety (90) days, up to and including December 7, 2020, for Defendant to file her response to the State's motion to set an execution date.

Respectfully submitted,

FEDERAL DEFENDER SERVICES  
OF EASTERN TENNESSEE, INC.

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### **Designation of Attorney of Record**

Stephen A. Ferrell is Ms. Pike's attorney of record and the attorney who should receive service. Counsel's contact information is:

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Undersigned attorney of record prefers notification of any orders or opinions of the Court by email to the following email addresses:

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**Certificate of Service**

I hereby certify the foregoing *Defendant's Unopposed Motion for Extension of Time to Respond to Motion to Set Execution Date* was electronically filed with the Court on September 1, 2020, and a copy sent via email to:

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