

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

IN RE: DONNIE JOHNSON

) **SHELBY COUNTY**
) **Originally S. Ct. No. 4**
M1987-00072-SC-DPE-DD

MOTION TO SET EXECUTION DATE

Pursuant to Rule 12.4(A), Rules of the Supreme Court of Tennessee, the State of Tennessee respectfully requests that the Court set an execution date for Donnie Johnson. In support of this motion, the State relies on the following:

1. Johnson was convicted in 1985 by a Shelby County jury of first degree murder and sentenced to death. This Court affirmed the judgment, *State v. Johnson*, 743 S.W.2d 154 (Tenn. 1987), and the United States Supreme Court denied a petition for a writ of certiorari. *Johnson v. Tennessee*, 485 U.S. 994 (1988).

2. In 1988, Johnson sought post-conviction relief in the trial court, which conducted a hearing, made findings, and denied relief. The judgment was affirmed in *Donnie E. Johnson v. State*, No. 61, 1991 WL 111130 (Tenn. Crim. App. June 26, 1991) (app. denied Mar. 8, 1993). On that same day, this Court issued an opinion finding that Johnson was not denied effective assistance of counsel on direct appeal. *Donnie Edward Johnson v. State*, No. 02-S-01-9207-CR-0008, 1993 WL 61728 (Tenn. Mar. 8, 1993).

3. While his first post-conviction petition was pending, Johnson filed a second *pro se* petition. The Court of Criminal Appeals reversed the trial court's denial of relief and remanded the case for further proceedings. *Donnie Edward Johnson v. State*, 02C01-9111-CR-00237, 1994 WL 90483 (Tenn. Crim. App. Mar. 23, 1994). This Court granted the State's application for permission

to appeal and remanded to the Court of Criminal Appeals for reconsideration in light of *House v. State*, 911 S.W.2d 705 (Tenn. 1995). *Donnie Edward Johnson v. State*, No. 02C01-9111-00237, 1995 WL 603159 (Tenn. Oct. 9, 1995). On remand the Court of Criminal Appeals affirmed the trial court's order denying relief. *Donnie E. Johnson v. State*, No. 02C01-9111-CR-00237, 1997 WL 141887 (Tenn. Crim. App. Mar. 27, 1997). This Court denied Johnson's application for permission to appeal.

4. In 1998, Johnson filed a petition for a writ of habeas corpus in the United States District Court for the Western District of Tennessee. The district court granted summary judgment in favor of the warden and dismissed the petition. The United States Court of Appeals for the Sixth Circuit affirmed the district court's judgment. *Johnson v. Bell*, 344 F.3d 567 (6th Cir. 2004). The United States Supreme Court denied a petition for writ of certiorari on April 26, 2004. *Johnson v. Bell*, ___ U.S. ___, 124 S.Ct. 2074 (2004) (No. 03-1210), and denied a petition for rehearing on June 28, 2004. *Johnson v. Bell*, ___ S.Ct. ___, 2004 WL 1432860 (2004).

5. Johnson has completed the standard three-tier appeals process, making the setting of an execution date appropriate. *See* Rule 12.4(A). The State therefore requests that an execution date be set no later than thirty (30) days from entry of the Court's order pursuant to Rule 12.4(E) ("The Court shall set the date of execution no less than thirty (30) days from the date of the order granting the State's motion.").

For the reasons stated, a new execution date should be set.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Motion has been forwarded via Facsimile and First-Class U.S. mail, postage prepaid on this the 1st day of July 2004 to:

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The undersigned attorney of record prefers to be notified of any orders or opinions of the Court by Facsimile at (615) 532-7791.

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