

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

STATE OF TENNESSEE V. EDWARD JEROME HARBISON

No. M1986-00093-SC-OT-DD - Filed: September 25, 2007

ORDER

On July 17, 2006, this Court set an execution date of October 11, 2006, for Edward Jerome Harbison. On August 15, 2006, the Court re-set the execution date to February 22, 2007. On February 1, 2007, the Governor of Tennessee granted an executive reprieve to Harbison to allow the Commissioner of Correction to review the manner in which death sentences are administered in Tennessee and to provide new protocols and related written procedures for administering a sentence of death. Upon completion of the Commissioner's review and expiration of the reprieve, the Court re-set Harbison's execution for September 26, 2007.

On September 19, 2007, the United States District Court for the Middle District of Tennessee held that the Tennessee Department of Correction's "Execution Procedures for Lethal Injection" violate the Eighth and Fourteenth Amendments to the Constitution of the United States and enjoined the Warden of the Riverbend Maximum Security Institution from executing Edward Jerome Harbison under the current procedures for lethal injection. The Federal District Court, however, refused to grant a stay. See Harbison v. Little, Case No. 3:06-1206 (M.D. Tenn. 2007).

On September 24, 2007, the State of Tennessee filed a "Motion to Vacate Order Setting Execution Date" requesting that this Court vacate its order setting Harbison's execution date for September 26, 2007. The motion alleged that the Commissioner of Correction had represented to the Office of the Attorney General that additional time is needed to determine what course of action the Department will take in response to the injunction. Furthermore, the Motion stated that "the Department will not be in a position to go forward with the execution of Mr. Harbison on September 26, 2007."

On September 24, 2007, Donald Dawson of the Post-Conviction Defender's Office, who is representing Harbison, filed a letter in response to the State's Motion, in which he stated that Harbison has no objection to the State's Motion.

Upon due consideration of the Motion and the letter in response, the Motion is GRANTED. The Order of May 22, 2007, setting the execution date for September 26, 2007, is hereby VACATED.

It is hereby ORDERED, ADJUDGED and DECREED that the execution date shall be re-set and that the Warden of the Riverbend Maximum Security Institution, or his designee, shall execute

the sentence of death as provided by law on the ninth day of January, 2008, unless otherwise ordered by this Court or other appropriate authority.

Counsel for Edward Jerome Harbison 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.

IT IS SO ORDERED.

PER CURIAM

J. Koch dissents