

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

STATE OF TENNESSEE V. EDWARD JEROME HARBISON

**Criminal Court for Hamilton County
No. 154361**

No. M1986-00093-SC-OT-DD

FILED

SEP 14 2010

Clerk of the Courts

ORDER

On July 26, 2010, the State filed a Motion to Re-Set Execution Date for Edward Jerome Harbison. The State included as an attachment to its Motion an order of the United States District Court for the Middle District of Tennessee vacating the 2007 injunction that has barred the State from executing Mr. Harbison. See Edward Jerome Harbison v. George Little, No. 3:06-cv-01206 (M.D. Tenn. July 12, 2010).

On September 3, 2010, Mr. Harbison filed a response to the State's motion in which he requests this Court either to modify his death sentence to life or to issue a certificate of commutation under Tenn. Code Ann. § 40-27-106 (2006). As grounds for modification of his sentence or issuance of a certificate of commutation Mr. Harbison argues that his sentence is disproportionate to the punishment received by other persons involved in this crime, that the passage of time has proved that his sentence is disproportionate to the punishments received in similar crimes, that the circumstances of his case are not consistent with those in cases where the death penalty has been imposed, that the recent commutations of the capital sentences of Michael Boyd and Gaile Owens establish that he deserves a sentence less than death, and that jurists reviewing his case have questioned the propriety of the death sentence for Mr. Harbison.

After carefully considering Mr. Harbison's request that we modify his sentence to life, we respectfully decline to do so because this Court does not have the authority, under Tennessee Supreme Court Rule 12.4(A) or any state statute or court precedent, to grant this relief at this stage of the proceeding. After also carefully considering Mr. Harbison's request for a certificate of commutation in accordance with Tenn. Code Ann. § 40-27-106, we have determined that none of the reasons advanced by Mr. Harbison demonstrate the sort of extenuating circumstances that would prompt us to issue a certificate of commutation. Accordingly, Mr. Harbison's request for a certificate of commutation under Tenn. Code Ann. § 40-27-106 is respectfully denied.

Upon due consideration of the State's motion, Mr. Harbison's response, and the attachments to the response, the State's motion to set execution date is granted. It is, therefore, ordered that the Warden of the Riverbend Maximum Security Institution, or his designee, shall execute the sentence of death as provided by law at 10:00 p.m. on the 15th day of February, 2011, or as soon as possible thereafter within the following twenty-four hours, unless otherwise ordered by the Court or other appropriate authority.

Counsel for Mr. 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.

PER CURIAM