

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

STATE OF TENNESSEE,	)	
	)	
Appellee,	)	
	)	COFFEE COUNTY
v.	)	NO. M1987-00067-SC-DPE-DD
	)	Filed April 6, 2004
GREGORY THOMPSON,	)	
	)	
Appellant.	)	

RESPONSE OF THE STATE OF TENNESSEE TO THOMPSON'S
NOTICE OF REQUEST BY INTER-AMERICAN HUMAN RIGHTS
COMMISSION OF THE ORGANIZATION OF AMERICAN STATES
THAT THE UNITED STATES TAKE PRECAUTIONARY
MEASURES TO PREVENT THE STATE OF TENNESSEE
FROM EXECUTING GREGORY THOMPSON AND
REQUEST FOR STAY OF EXECUTION

Thompson requests that this Court issue a stay of his execution currently scheduled for August 19, 2004, based on a petition he has filed with the Inter-American Commission on Human Rights ("IACHR" or Commission), asserting that his execution would violate the American Declaration of the Rights and Duties of Man ("American Declaration") due to mental illness and because of alleged "irregularities" in his criminal proceedings.¹ In his motion to this Court, Thompson asserts that the rules of the IACHR allow the United States two months to respond and, assuming the government uses all of its allotted time, a stay is necessary to allow the Commission sufficient time to examine Thompson's case. In addition, Thompson's motion cites the IACHR's request that the United States take "precautionary measures" to avoid irreparable damage to the

¹Because Thompson's petition to the IACHR was submitted *ex parte*, this information is derived from a letter from Ariel Dulitzky to attorneys Michael J. Passino and Marjorie Bristol, dated March 31, 2004, noting receipt by the Commission of Thompson's petition.

“victim” of the petition, Gregory Thompson.

Thompson has presented no valid justification for a stay of execution. First, neither the request for precautionary measures, nor any subsequent conclusions the IACHR may reach in Thompson’s case, have any binding effect on the United States government, let alone the courts of the State of Tennessee. Moreover, the American Declaration of the Rights and Duties of Man, under which Thompson invokes the Commission’s authority, creates no judicially cognizable rights in individuals. Rather, it is an aspirational document, imposing no enforceable obligations on the part of any of the Organization of American States member nations. *Garza v. Lappin*, 253 F.3d 918, 923 (7th Cir. 2001) (American Declaration of the Rights and Duties of Man is aspirational document that, in itself, creates no directly enforceable rights).

In 1951, the United States ratified the Charter of the Organization of American States (“OAS”).² The OAS is a regional agency within the United Nations, developed to achieve an order of peace and justice, to promote solidarity, to strengthen collaboration, and to defend the sovereignty, territorial integrity and independence of member nations. The OAS has no powers other than those conferred by its Charter, none of whose provisions authorize intervention in matters that are within the internal jurisdiction of its member nations.³ The OAS Charter authorized the creation of the Inter-American Commission on Human Rights, which serves as an autonomous consultive organ to the OAS on human rights matters. The OAS Charter further authorized a convention to determine the structure, competence, and procedure of the Commission. The resulting American Convention on Human Rights (“American Convention”) accomplished that purpose and, as well, created an

²The treaty was ratified by the United States as amended in 1968.

³A copy of the OAS Charter can be found at: www.oas.org/main/english/.

Inter-American Court of Human Rights, whose decisions are potentially binding on member nations.⁴ However, while the United States has signed and ratified the OAS Charter, and therefore is a member state thereof, it has not ratified the American Convention. *See, e.g., Stanford v. Kentucky*, 492 U.S. 361, 390 n.10, 109 S.Ct. 2969, (1989) (noting that Article 4(5) of the American Convention on Human Rights has been signed, but not ratified, by the United States). Consequently, the American Convention does not qualify as a “treaty” of the United States that creates binding obligations.

Indeed, the Commission’s governing document, the Statute of the Inter-American Commission on Human Rights, provides separate procedures for processing complaints against nations that have ratified the Convention and those, like the United States, that have not ratified the Convention. Under the Commission’s governing statute, the Commission’s authority as to complaints, such as Thompson’s, against non-ratifying nations is limited to making *recommendations* for what it might consider more effective observance of human rights.⁵ As to state parties to the American Convention, the IACHR’s powers are extended to include action before the Inter-American Court of Human Rights. Under neither circumstance, however, does the IACHR’s authority as to member nations exceed simply making non-binding recommendations in response to complaints of human rights violations.

The request for precautionary measures in response to Thompson’s petition, then, is just that — a “request” — which has no binding effect on either the United States government or this Court,⁶

⁴A copy of the American Convention on Human Rights can be found at: www.cidh.oas.org/basic.htm.

⁵ *See* Statute of the Inter-American Commission on Human Rights (October 1979), Art. 20(b). (*see* page 5-6 of attached copy).

⁶ It is also a request emanating from nothing more than the *ex parte* filing of Thompson’s petition.

as would be the result of any proceedings conducted by the IACHR on Thompson's petition. In short, the Commission's decisions have no effect on domestic judicial proceedings. *See Garza*, 253 F.3d at 925 (the United States has not obligated itself to be bound by the Commission's decisions); *Roach v. Aiken*, 781 F.2d 379, 380 (4th Cir. 1986)(stay of execution denied where no treaty obligation would require enforcement of a decision of the Commission); *Jamison v. Collins*, 100 F.Supp.2d 647, 766 (S.D. Ohio 2000) (same); *see also Buell v. Mitchell*, 274 F.3d 337 (6th Cir. 2001) (American Declaration of the Rights and Duties of Man not binding on the courts of the United States).

Both the OAS Charter and the language of the Commission's statute show that the IACHR does not have the power to bind member states, much less to create judicially cognizable rights in individuals. *Garza*, 253 F.3d at 925. Therefore, Thompson cannot demonstrate a substantial likelihood of success in the courts of Tennessee or the United States arising out of his petition to the Commission. *Workman v. Sundquist*, 135 F.Supp. 2d 871 (M.D.Tenn. 2001) (death-row inmate not entitled to temporary restraining order staying execution where inmate could not show that decision of Commission enforceable in the courts of the United States); *In re Sapp*, 118 F.3d 460, 464 (6th Cir. 1997); *Delo v. Blair*, 509 U.S. 823, 113 S.Ct. 2922, 125 L.Ed.2d 751 (1993) (per curiam) (stay of execution requires showing of substantial grounds upon which relief might be granted). *Compare Nashville, C. & St. L. Ry. v. Railroad and Public Utilities Commission*, 32 S.W.2d 1043, 1045 (Tenn. 1930) (injunction to maintain *status quo* will not issue unless party establishes that it will probably prevail on the merits).

Thompson's motion for a stay of execution should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Response of the State of Tennessee has been forwarded via Facsimile and First-Class U.S. mail, postage prepaid, on this the _____ day of April, 2004, to:

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