

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

STATE OF TENNESSEE V. BILLY RAY IRICK

FILED

AUG 04 2010

Clerk of the Courts

Criminal Court for Knox County
No. 24527

No. M1987-00131-SC-DPE-DD - Filed: August 4, 2010

ORDER

On May 10, 2010, the State filed a motion to set an execution date for Billy Ray Irick. The State alleged that Mr. Irick had completed the standard three-tier appeals process and that an execution date should therefore be set in accordance with Tennessee Supreme Court Rule 12.4(A). On July 19, 2010, this Court granted the State's motion to set an execution date for Billy Ray Irick and ordered the issue of Mr. Irick's competency remanded to the Criminal Court of Knox County for an expeditious determination of his present competency in accord with the procedures and time limits set forth in Van Tran v. State, 6 S.W.3d 257, 267-73 (Tenn. 1999).

On July 22, 2010, Mr. Irick filed a "Motion to Vacate Execution Date Given Imminent Reopening of Federal Habeas Proceedings and Motion to Vacate Ford Proceedings without Prejudice to Renewal Following Conclusion of Habeas Proceedings." According to this motion and an attached order, see In re Billy Ray Irick, No. 02-5105 (6th Cir. July 20, 2010), after an extended delay the United States Court of Appeals for the Sixth Circuit removed Mr. Irick's motion for leave to file a second or successive habeas corpus petition from abeyance, denied the motion as unnecessary, and remanded the case to the United States District Court for a ruling on Mr. Irick's Rule 60(b) motion. Mr. Irick argues that since the district court will be reopening his initial federal habeas corpus proceedings, he is still in the process of pursuing his first federal habeas challenge to his death sentence and thus has not "pursued at least one unsuccessful challenge to [his] . . . conviction and death sentence" as required by Tennessee Supreme Court Rule 12.4(A) to set an execution date. The motion requests that the Court vacate the execution date currently set, pending the conclusion of the reopened habeas proceedings, and also vacate, without prejudice, the order remanding for hearing the issue of his present competency for execution.

On July 26, 2010, the State filed a response to the motion. The State submits that it possesses a final judgment against Mr. Irick in his federal habeas corpus proceedings, that

Mr. Irick's motion for relief from judgment pursuant to Fed. R. Civ. P. 60 does not affect the judgment's finality or suspend its operation, and that the prerequisites for setting an execution date under Tennessee Supreme Court Rule 12.4(A) have been met. Under the circumstances presented by the motion, this Court has repeatedly held that a request for a stay of execution to litigate claims in federal court should not be addressed to this Court but is more properly addressed to the federal court. See Coe v. State, 17 S.W.3d 251, 251 (Tenn. 2000).

Upon due consideration of the motion to vacate, the attachments to the motion, and the response, the Court concludes that the Motion to Vacate should be denied.

On July 22, 2010, Mr. Irick also filed a "Motion for Additional Time to Prepare and Present Evidentiary Hearing as to Incompetence to be Executed," in which he contends that the time line for his competency proceedings under this Court's order of July 19, 2010, and in accord with Van Tran v. State violates due process and his rights under the Eighth and Fourteenth Amendments to the United States Constitution and Article I, sections 8, 9, 16 and 17 of the Tennessee Constitution by depriving him of sufficient time and resources to determine his competency. On July 26, 2010, the State filed a response, in which it points out that Mr. Irick has not yet made a substantial threshold showing of insanity as required before the basic requirements of due process are implicated under Ford v. Wainwright, 477 U.S. 399 (1986), and Panetti v. Quarterman, 551 U.S. 930 (2007). Additionally, the State contends that the procedure provided by Van Tran v. State is more generous than that mandated by Ford and Panetti, neither of which imposes a particular time frame on procedures for determining a prisoner's competency to be executed. See also Coe v. Bell, 209 F.3d 815, 825 (6th Cir. 2000) (holding Van Tran procedures satisfy the due process requirements of Ford).

After careful review of the motion and the response, the Court concludes that the Motion for Additional Time should be denied.

It is so ORDERED.

PER CURIAM