

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

IN RE:) **CAMPBELL COUNTY**
OLEN E. HUTCHISON) **ORIGINAL APPEAL NO.**
) **M1991-00018-SC-DPE-DD - Filed 9/10/03**

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 OLEN E. HUTCHISON. In support of this motion, the State relies on the following:

1. Hutchison was convicted by a Campbell County jury in 1991 of first degree murder, conspiracy to take a life, and solicitation to commit first degree murder. He was sentenced to death for the first degree murder. This Court affirmed the judgment, *State v. Hutchison*, 898 S.W.2d 161 (Tenn. 1994), and the United States Supreme Court denied a petition for a writ of certiorari. *Hutchison v. Tennessee*, 516 U.S. 846 (1995).

2. In 1995, Hutchison sought post-conviction relief in the trial court, which conducted a hearing, made findings, and denied relief. The judgment was affirmed in *Hutchison v. State*, No. 03C01-9601-CC-00033, 1997 WL 607502 (Tenn.Crim.App. Oct. 3, 1997). This Court denied review, and the United States Supreme Court denied a petition for a writ of certiorari. *Hutchison v. Tennessee*, 525 U.S. 904 (1998).

3. In 1996, Hutchison filed a second petition for post-conviction relief. The trial court denied relief and that decision was affirmed on appeal. *Hutchison v. State*, No. 03C01-9702-CR-

00065, 1997 WL 776342 (Tenn.Crim.App. Dec. 18, 1997). This Court denied review on January 4, 1999.

4. In 1998, Hutchison filed a petition for writ of habeas corpus in the United States District Court for the Eastern 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. *Hutchison v. Bell*, 303 F.3d 720 (6th Cir. 2002). The United States Supreme Court denied a petition for writ of certiorari on June 23, 2003, *Hutchison v. Bell*, __ U.S. __, 123 S.Ct. 2608 (No. 02-10107), and denied a petition for rehearing on August 25, 2003. (copy of notice attached)

5. Although Hutchison has presently pending in the district court a motion requesting extraordinary relief,¹ he has completed the standard three-tier appeals process, making the setting of an execution date appropriate. *See* Rule 12.4(A).

¹On August 19, 2003, Hutchison filed a Motion for Relief from Judgment pursuant to Fed.R.Civ.P. 60(b) in the United States District Court for the Eastern District of Tennessee. Such a motion is not part of the standard three-tier review process. Although the district court has yet to act on this motion, Rule 60(b) motions filed in habeas cases are treated as second or successive petitions and must be forwarded to the United States Court of Appeals for the Sixth Circuit to conduct a gate-keeping review to determine whether they meet the limited criteria for bringing a second or successive petition. 28 U.S.C. § 2244(b); *McQueen v. Scroggy*, 99 F.3d 1302, 1335 (6th Cir. 1996).

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 ____ day of September, 2003 to Dana C. Hansen, Federal Community Defender's Office, 530 S. Gay Street, Suite 900, Knoxville, Tennessee 37902, (865) 637-7999 (FAX). The undersigned attorney of record prefers to be notified of any orders or opinions of the Court by Facsimile at (615) 532-7791.

ALICE B. LUSTRE
Assistant Attorney General