

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

BYRON LEWIS BLACK v. STATE OF TENNESSEE

Criminal Court for Davidson County
No. 88-S-1479

No. M2000-00641-SC-DPE-CD¹

ORDER

Byron Lewis Black has been on Tennessee's death row for almost thirty-seven years. After decades of unsuccessful challenges to his convictions and sentences and four challenges to Tennessee's execution protocol,² this Court reset his execution for August 5, 2025.

On July 28, 2025, Mr. Black filed this application for a stay of his execution pursuant to Tennessee Supreme Court Rule 12(4)(E), which provides, in pertinent part:

After a date of execution is set, the Court will not grant a stay or delay of an execution date pending resolution of collateral litigation in federal court. Likewise, the Court will not grant a stay or delay of an execution date pending resolution of collateral litigation in state court unless the prisoner can prove a likelihood of success on the merits in that litigation.

Tenn. Sup. Ct. R. 12(4)(E). In this case, the pending collateral litigation involves Mr. Black's 2002 motion to reopen his state post-conviction proceedings to litigate his intellectual disability claim. The trial court concluded that Mr. Black had failed to establish

¹ This Court's execution order was entered under this case number, No. M2000-00641-SC-DPE-CD. Mr. Black mistakenly filed this application for stay in *Black v. State*, No. M2004-01345-SC-R11-PD, which is a collateral proceeding in which the mandate issued in 2006. The State's response and Mr. Black's reply were filed under that same case number. Despite the error, we dispose of his application under the correct case number, and we order that all future filings related to this application shall be directed to this case number.

² See *Black v. State*, No. M2000-00641-SC-DPE-CD, 2025 WL 1927568 (Tenn. July 8, 2025) (Order), *petition for cert. filed*, ___ U.S. ___ (July 16, 2025).

he is intellectually disabled, and Mr. Black was unsuccessful on appeal. *Black v. State*, 2005 WL 2662577 (Tenn. Crim. App. Oct. 19, 2005), *perm. app. denied*, (Tenn. Feb. 21, 2006), *cert. denied*, 549 U.S. 852 (2006). The mandate issued on March 8, 2006. Nearly twenty years later, on July 1, 2025, Mr. Black filed a motion to recall the mandate, which was denied by this Court on July 8, 2025. *Black v. State*, No. M2004-01345-SC-R11-PD (Tenn. July 8, 2025) (Order). Twenty days later, Mr. Black filed this application for a stay. Mr. Black has also filed in the United States Supreme Court a petition for a writ of certiorari and an application for a stay, arguing this Court's failure to recall the mandate denied him due process. He asks the United States Supreme Court to hold his petition pending its decision in *Hamm v. Smith*, No. 24-872, 2025 WL 1603602, at *1 (U.S. June 6, 2025) and to grant his application for a stay.

As asserted by the State, a petition for a writ of certiorari in the United States Supreme Court is considered “collateral litigation in federal court” and therefore is not a basis for a stay in this Court. *State v. Zagorski*, No. M1996-00110-SC-DPE-DD (Tenn. Oct. 9, 2018) (citing *Coe v. State*, 17 S.W.3d 251, 251 (Tenn. 2000)); Tenn. Sup. Ct. R. 12(4)(E). Regardless, we conclude that Mr. Black has also failed to prove a likelihood of success on the merits in his pending collateral litigation. It is therefore ORDERED that the application for a stay is respectfully DENIED.

PER CURIAM