

No. 3-5524

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IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

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JANET KIRKPATRICK  
(Next Friend for Paul Dennis Reid),

*Petitioner-Appellant*

v.

RICKY BELL, Warden

*Respondent-Appellee*

**FILED**

APR 28 2003

LEONARD GREEN, Clerk

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MOTION FOR STAY OF EXECUTION  
CAPITAL CASE  
EXECUTION SCHEDULED APRIL 29, 2003 at 1:00 A.M.

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Respectfully Submitted,

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Comes the appellant, Mrs. Janet Kirkpatrick, and respectfully requests that this Court enter a stay of execution, obtain the record, and order briefings and argument on the issue of whether the lower court erred by not finding reasonable cause that Reid was incompetent and ordering a full evidentiary hearing on that issue. *See Harper v. Parker*, 177 F.3d 567, 571 (6<sup>th</sup> Cir. 1999); *see also Lonchar v. Thomas*, 517 U.S. 314, 116 S.Ct. 1293 (1996).

#### **FACTS THAT REQUIRE FULL EVIDENTIARY DEVELOPMENT**

Mr. Reid, who is gravely mentally ill, is scheduled to be executed at 1:00 a.m., April 29, 2003. He is a Tennessee death-sentenced inmate who would be entitled to a stay of execution for the asking—this would be a first habeas corpus action, and he would in fact have almost a year to file in the district court under the AEDPA. Mr. Reid's sister, Mrs. Janet Kirkpatrick, filed a petition in the federal district court seeking a stay of execution and the appointment of counsel, as a next friend for her mentally ill brother.

That motion was submitted with four (4) reports from qualified and competent mental health experts and bizarre writings from Mr. Reid. Mr. Reid has long suffered from delusions that the military/government controls his entire life. In his writings he has outlined in great and insane detail how the government has monitored, controlled, and interfered with his life and the lives of those around

him. He also suffers from torturous ear-ringing, tactile hallucinations, and auditory hallucinations that are caused by radiation and other "government technology".<sup>1</sup> The four experts stated that there was no question but that Mr. Reid was mentally ill and that his decision to forego his appeals was the result of his delusions and mental illness; Reid wants to not appeal because he wants the torture of the government conspiracy to stop. He wants to die because of his delusions.

The district court gave the State 48 hours to test Mr. Reid. After 48 hours, the state revealed that they had no intention of testing Mr. Reid and would offer no evidence on the preliminary question of whether Mr. Reid was incompetent. Thereafter, a preliminary hearing was held on the issue of whether Mr. Reid was acting irrationally.

#### REASON FOR A STAY AND FULL BRIEFING

The Respondent advised the lower court that it could not meaningfully participate in a hearing on the issues raised because it had had no time to prepare. The district court judge stated that he was required to proceed according to "draconian" timetables because an execution date was looming. Counsel for the

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<sup>1</sup>In its order, the district court found that Mr. Reid suffered from these hallucinations and delusions.

Petitioner asked the lower court to stay the execution and conduct a full evidentiary hearing at a later date. The Court refused, and went forward while at the same time telling counsel this would not be a full hearing. The Court limited counsel significantly, especially in the examination of Mr. Reid, because there was an execution scheduled, and required that counsel conduct the hearing according to a tight schedule (2 -3 hours) rather than according to the process required for resolving complex psychiatric issues.<sup>2</sup>

Appellant contends that the filings below required a stay and a meaningful hearing. *Per force*, once the preliminary hearing was completed clearly a stay and a full hearing were in order. The Sixth Circuit recognizes that there is no Supreme Court precedent for the procedure to be followed in determining whether a condemned person can waive further appeals and the standard on appeal for reviewing such decisions. *Harper v. Parker*, 177 F.3d 567, 571 (6<sup>th</sup> Cir. 1999). The Sixth Circuit has held, however, that the district court may have a preliminary hearing on the issue to determine whether there is "any evidence that would raise a reasonable doubt about [the condemned's] competence, and entitl[e] [the condemned] to a full evidentiary hearing on the issue." *Id.* This Court must now

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<sup>2</sup>Mr. Reid has a complicated psychiatric and legal history." P.6, Attachment 1, Notice of Intent to Use Exhibits at Hearing in Support of Motion. (State's expert, Dr. William Bernet.)

determine if the district court erred in not providing a stay and a full evidentiary hearing in this case. The district court should have granted a full evidentiary hearing unless "there was no reasonable cause to believe that [Mr. Reid] was incompetent." *Id.*

### EVIDENCE AT THE PRELIMINARY HEARING

The following evidence was heard, none of which was cross-examined by the state or refuted in any manner.

The first person to testify at the preliminary hearing was Mr. Reid, called by the Court. Mr. Reid said that he knew he was scheduled to be executed and that he did not want to do anything to stop it. His statements about why he wanted to be executed were muddled and inconsistent, but involved in some manner that the victim's were entitled to their day in court. On cross-examination, Mr. Reid admitted that he believed that he had been under government/military surveillance for years and years, that the government was torturing him by causing his ears loudly to ring all the time causing excruciating and unbearable pain, and he wanted the ringing and the torture to end. He attempted to downplay all of his mental problems and to do his best to appear rational.<sup>3</sup>

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<sup>3</sup>The court used a stop watch approach to Reid's cross-examination, telling counsel he could ask ten more minutes worth of questions at a certain point. This was crippling—Mr. Reid rambles and rambles, and the nature of his illnesses and

Dr. Xavier Amador, Ph.D., then testified that Paul Reid's "choice" to be executed was not rational. Dr. Amador stated that "there is no question in my mind that" there has been a recent exacerbation of Mr. Reid's illness and that his "decision" to drop his appeals is driven by his need to stop the torture of the military government. Dr. Amador spoke with Reid immediately after Reid's testimony during the break in proceedings. Dr. Amador testified that during that conversation Reid apologized to him for his testimony but that he "did what he had to do" because he "had to stop the torture" from the government technology. Reid said this in the presence of corrections officers and family members.

Further, Dr. Amador stated that from his observations of and conference with Mr. Reid in the courtroom it was patently and unambiguously clear that Reid was currently suffering from the same delusions he witnessed when he evaluated Reid on April 24, 2003. It was these delusions that were driving Reid's "decision" to stop his appeals. Dr. Amador further explained that, like fifty percent of the patients who suffer with illnesses similar to Reid's, it is critical to Reid that he appear normal. That is why Reid testified in a manner that could be

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defects are such that he is very tangential in his responses. The experts reported that it took hours to get at his illnesses, and they are trained professionals. This Court should read the rambling.

interpreted as partially rational. Reid does not believe that he is sick and does everything in his power to convince others that he is not ill. Dr. Amador explained that in order to prove that he is not ill that Reid was minimizing the influence of his delusions. In fact, Dr. Amador testified that Reid had previously told him that he was going to lie to the judge so that he could be executed. Reid explained to Amador that he had to lie to the judge so that his execution could proceed as this was the only way that he could stop the torture that the government military had recently intensified and had been visiting upon him for the past nineteen years.<sup>4</sup>

Robert Kirkpatrick, Mr. Reid's brother-in-law, testified that Reid has maintained that the government military had been conducting experiments on his mind and body since the mid-1980s. Mr. Reid has persistently accused Mr. Kirkpatrick and his wife (Reid's sister Janet, Appellant herein) of being coached by the military government in their interactions with him. Mr. Kirkpatrick stated that Reid has maintained his delusions about the military government consistently over all the years that he has known him. Mr. Kirkpatrick stated that during a

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<sup>4</sup>Mrs. Kirkpatrick also introduced PET Scan images of Mr. Reid's brain as well as the report from Dr. Robert Kessler interpreting the images which show that portions of Mr. Reid's brain are missing. The state did not challenge the report or its interpretations.

visit at the prison yesterday (April 27, 2003) Mr. Reid told him and his wife, Janet, that if they would only admit that the government military was coaching them then he would agree to pursue litigation that would keep him alive. This was unrefuted.

Mrs. Kirkpatrick also presented the testimony of Mike Engle, one of Reid's trial attorneys. Engle testified that he has known Mr. Reid since June 5, 1997. Mr. Engle testified that he had met with Reid on four different occasions in the past few days. Mr. Engle's uncontradicted, sworn testimony was that Mr. Reid has repeatedly told him that the only reason he is trying to stop his appeals is because it is the only way to free himself from the torture of the military government who regularly conduct scientific experiments on his body, cause his ears to ring and irradiate him. Reid told Engle that he must end the torment.

Engle also testified that Reid had told him just yesterday that he had four conditions under which he would pick up his appeals:

- 1) The government had to "turn it off," i.e. stop surveillance, the ringing in his ears and the irradiation and torture;
- 2) The government military must substantiate his allegations of scientific experiments on Reid to the press and media;
- 3) The government military must bring the true killers forward;
- 4) The government military must vindicate him in the State of Texas and



compensate him for all of the time that he has been under surveillance and the subject of scientific experiments. Mr. Reid maintains that he is owed twenty-five million dollars in reparations.

Engle testified, without contradiction, that Reid's delusions had become more active and all controlling recently. Engle stated that in initial meetings with Reid, Reid would not talk about the government military conspiracy, but recently, he made no attempts to hide his delusions. Engle testified that Reid told him that the government had video-tapes of the true killers because of the surveillance.

Appellant then proffered the testimony of the three other mental health experts who would swear that Mr. Reid is acting on the basis of his insane delusions, the testimony of another of Mr. Reid's attorneys who Reid told in court today that he was dropping his appeals only to end the "government surveillance torture," and the testimony of a minister who would verify that Reid's condition has worsened to the point of full blown psychosis in recent days.

In sum, all of the witnesses testified, without challenge, that Mr. Reid's "decision" to stop his appeals is the pure product of his desire to stop the torture and surveillance of the government military. These delusions are controlling Mr. Reid and preventing him from acting rationally.

Documents and other out of court statements by Reid himself confirm this reality. Mr. Reid has written Books One and Books Two, and provided these

books to Engle. Engle reveled the presence of these books on the witness stand, and they show the following:

- 7 The Gov't-Military uses scientific technology on my brain, the most awful, painful torture anyone can experience.
- 8 I'm on death row, and I truly thank God because the psychological trauma has me begging to die to escape all the future ears ringing, mind going from extreme to extreme, body flickering all caused by Gov't-Military scientific technology. I'm grateful I'm in the process in the Tennessee court to receive an execution. My life has been totally miserable since 1985.
- 9 I view my life as worthless no meaning since 1985, no purpose
- 15 Nothing more than a scientific technology lab-rat experimental subject from 1985 to the present of 2002. Now, someone may have a more vivid understanding why I accept the execution in Tennessee for seven homicides I didn't commit. The psychological trauma is such that after 18-years of hoping, wishing, praying for this nightmare ordeal to end, there is no place mentally for me to go or explore, but to face and contemplate my Tennessee execution.

**"Special Notes In No Scientific Chronological Order"**

**1 Be Honest - Why I Fear To Live**

Recounts in 10 pages Reid's assertions that the Gov't-Military scientific technology has made his life a living Hell and has caused him to fear living. Begins each paragraph with "Why I Fear Living:" and then lays out his delusions/hallucinations. Specifically

- 8 Today, I dread waking up, I wonder how bad will they torture my ears, mind, body.... I dread living, and I pray to God to hurry an expedite my execution.

10 the psychological trauma has mounted the past 18-years beyond anything I subjectively can or desire to surmount. **I proudly accept the execution with cheerfulness...**

Similar writings were submitted to the Court from a 92 page letter Reid wrote last week. He says that:

70 The pure hell torture of the scientific technology used to torment my ears every hour since 1985, torment my mind every hour since 1985. And not one decent, full night sleep allowed by the diabolical military scientist who control me since 1985. Now you wonder why I don't want to live in God's green earth anymore, and why I totally accept the execution. My life ended in 1985 ... Its been a pure living hell nightmare.

71 I was the unlucky one who got caught between the cross-hairs of the military-gov't scientific technology machine in 1985. An[d] after that, thats all she wrote, my life was snuffed-out at a tender age of twenty-seven. Now, I'm just waiting for the state of Tennessee to take me out of my misery, which I'm begging them

Appendix 10 to Motion for Stay and Appointment of Counsel. And in comments to the press last week, Mr. Reid revealed the following:

2 "This is why I am dropping my appeals," he said. "Because the military government has been in control of my life since 1985"

Supplemental Notice of Intent To Use Exhibits At Hearing, Attachment 6, 4/24/03  
Leaf/Chronicle.

#### **THE ORDER DENYING RELIEF IS INSUFFICIENT**

After this preliminary hearing, the district court entered an order denying

next friend status. The district court judge did not explain, or mention in any manner, why the unanimous and uncontradicted evidence from expert, lay persons, and Reid's writings did not show beyond cavil that there was at least a reasonable basis for staying the execution and conducting a full, fair, and complete hearing on Mr. Reid's competence. Instead, without rejecting or evaluating that testimony in any way, the court wrote that Reid had "knowingly, intelligently, voluntarily and rationally decided" to be executed, and that "Reid's mental illness is not the proximate cause of Reid's decision."

What is? What is the rational basis that Reid has selected for dying? None was identified by the district court. We cannot address on this appeal what the rational basis was that was identified by the district court, or upon what basis the court decided that the experts were wrong--it went unstated.. **What the experts had to say was not mentioned at all, much less discounted for any reason.**

Furthermore, assuming *arguendo* that Reid stated a rational basis, Appellant's position is not that Reid cannot state a basis that is rational. *If that's all it took, then the lunatics would run the asylum.* Reid could, arguably, state a rational basis for abandoning appeals, but that does not mean that that basis drives his conduct. And the unrefuted testimony from expert and layperson and newspaper reporter alike was that Reid was dropping his appeals because of his

delusions and the torture he perceived was being inflicted by government surveillance and "technology."

### CONCLUSION

Mr. Reid is actively delusional. His "choice" to end his appeals is driven only by his serious mental illness. This court must act now to stay his execution and permit briefing and argument on this serious and complex issue inasmuch as the record satisfies this court's standards for requiring full evidentiary development on competency to waive further appeals.<sup>5</sup>

Respectfully Submitted,

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By: MO

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<sup>5</sup>While Respondent argued that under West v. Bell, 242 F.3d 338 (6<sup>th</sup> Cir. 2001) and Franklin v. Francis, 144 F.3d 429 (6<sup>th</sup> Cir. 1998), the AEDPA requires federal courts to defer to the Tennessee Supreme Court "finding" that Paul Reid could make a rational decision, the District Court did not address this argument. It chose instead to decide this case on the merits. The applicability of West v. Bell and Franklin v. Francis remains unresolved, and provides an additional reason why a stay should be granted and further briefing ordered.

Please contact Mark Olive via the  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and exact copy of the foregoing has been delivered via facsimile to Assistant Attorney General Amy Tarkington, Office of the Attorney General, P.O. Box 20207, Nashville, Tennessee 37202 on this 28<sup>th</sup> day of April, 2003.



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Counsel for Next Friend