

**IN THE CRIMINAL COURT FOR DAVIDSON COUNTY, TENNESSEE
DIVISION III**

PAUL DENNIS REID, JR.)	
)	
)	
vs.)	No. 97-C-1834
)	(Captain D's)
)	(Capital Case)
)	(Post-Conviction)
)	
STATE OF TENNESSEE)	

ORDER

Petitioner filed a motion in which he objects to providing pre-hearing disclosure of his experts' reports and to filing his amended petition on the previously-ordered date. Although the Court agrees to provide petitioner with additional time in which to file an amended petition, the Court finds the remainder of the motion to be without merit.

Before addressing the current motion, the Court wishes to address what the Court believes to be petitioner's counsel's troubling habit of wasting time addressing insignificant issues and/or repeating previously-recited facts and arguments while she simultaneously and repeatedly argues that she has insufficient time to devote to the relevant, substantive post-conviction issues. To accurately convey the Court's concerns, it is necessary for the Court to briefly discuss the procedural history of the post-conviction proceedings.

During the late-night hours of April 28, 2003, the night of petitioner's scheduled execution, petitioner filed a post-conviction petition. On numerous occasions on April 29 and April 30, multiple attorneys and support staff with the Post-Conviction Defender's

Office (PCDO) contacted this Court's staff insisting that the Court issue an order appointing their office to represent petitioner. On each occasion, the Court's staff stated that the Court was aware of its statutory duty to appoint the PCDO to the case and that the Court would issue an order to that effect at its earliest convenience.¹

On April 30, the PCDO filed a motion asking the Court to prevent the Department of Correction from transporting petitioner to Brushy Mountain Prison. The Court was aware that counsel intended to file this motion. However, given the Court's assurances that it intended to appoint the PCDO to the case, the Court found it curious that counsel dedicated three pages of the motion to a legal argument regarding the Court's obligation to appoint that office.

On May 1, the Court issued orders appointing the PCDO to represent petitioner in this case and declining to require the Department of Correction to allow petitioner to remain in Nashville. Although counsel was statutorily entitled to only thirty days in which to file an amended petition, the Court granted the PCDO ninety days in which to do so and set a hearing for December 1, 2003.

On May 13, petitioner's counsel filed four motions. Among them was a motion objecting to the Court's use of the term "Captain D's" in the case caption. Instead of advancing a straight-forward legal argument on this arguably-frivolous issue, counsel advanced the baseless assertions that the Court "adopt[ed] the nomenclature of the media coverage of the case", that "[t]his nomenclature may sell newspapers, but is

¹The Court's staff also informed the callers that the Court was presiding over a child rape trial at the time of their calls. This trial began prior to petitioner's scheduled execution and the Court was required to recess it in anticipation of last-minute filings by family members and attorneys attempting to stop petitioner's execution. The Court resumed the trial on the morning of April 29 with the Court's apologies to the witnesses, parties, and interested persons.

wholly inappropriate for a court of law”, and that the Court’s “use of this offensive nomenclature in referring to this case demonstrates that the Court has been exposed to and influenced by the vast media coverage of this case.”

Although the Court had issued its scheduling order less than two weeks prior and petitioner’s amended petition was not due for more than two months, counsel’s second May 13 motion was a lengthy request for an extension of time in which to file the amended petition. Finally, counsel’s remaining motions objected to other portions of the scheduling order and asked the Court to hold this case in abeyance pending resolution of a matter in the United States Supreme Court.

On June 4, the Court conducted a hearing during which it heard arguments from both parties. Given the fact that the Court presided over two of petitioner’s three trials and is well aware of the nature and scope of a post-conviction proceeding, the Court declined counsel’s offer to present the testimony of a “document specialist” in support of the motion for an extension. During the hearing, the Court suggested that it might be appropriate for counsel to attempt to comply with the Court’s scheduling order before concluding that doing so would be impossible. In response, counsel submitted a supplemental memorandum of law to which she attached a document specialist’s affidavit. Counsel also submitted a supplemental memorandum reiterating her objections to other portions of the Court’s scheduling order.

On June 16, the Court issued an order addressing petitioner’s four motions. As to the motion for an extension of time in which to file an amended petition, the Court acknowledged that the “record contains a great deal of information” but concluded that the motion had been filed prematurely and encouraged counsel to attempt to comply

with the scheduling order. The Court noted, however, that if counsel found it impossible to comply with the Court's order the Court would reconsider the motion for an extension as the scheduled filing date approached. With regard to counsel's challenges to the portion of the scheduling order which dealt with expert witnesses, the Court granted counsel's motion in part and denied it in part.

Four days later, counsel filed a motion requesting that the Court appoint a private Kentucky attorney as co-counsel to assist Ms. Bristol in representing petitioner. In the motion and attached affidavit, counsel again complained about her inability to comply with the Court's scheduling order but failed to acknowledge the Court's offer to reconsider the motion for an extension at the appropriate time. On June 27, the Court filed an order denying the motion.

On July 15, counsel filed the current motion proposing findings of fact with regard to the mental health expert discovery issue and objecting to portions of the Court's June 16 order "affirming an unrealistic filing deadline for the amended petition".² In this motion, counsel addresses insignificant issues and repeats previously-presented arguments and factual assertions. For instance, one of the issues raised by counsel in the current motion is a complaint concerning the Court's use of the term "themselves" when referring to petitioner's counsel in its June 16 order. Counsel notes that she is petitioner's only attorney and that the Court's suggestion to the contrary was improper.

²In a footnote, counsel notes that she ordered a copy of the June 4 hearing transcript and intends to supplement her motion with a copy thereof. If counsel does not recall what occurred at the hearing and wishes to review the transcript for the purpose of refreshing her recollection, the Court encourages her to do so. However, if the sole purpose of ordering the transcript is to attach it to the pending motion, counsel need not waste the court reporter's time. The Court clearly recalls what occurred during the June 4 hearing.

What counsel fails to note is that petitioner was represented by two attorneys during the June 4 hearing, which was the subject of the June 16 order. Because counsel subsequently filed a motion stating that she was petitioner's sole counsel and the Court issued an order denying her request for private co-counsel, it should have been obvious to counsel that the Court was well aware of her status as counsel in this case and that it was unnecessary for her to take the time to remind the Court of that fact in yet another motion.

Moreover, this Court did not appoint Ms. Bristol to represent petitioner. The Court appointed the PCDO to represent him. Because the General Assembly created that office for the purpose of representing capital defendants in post-conviction proceedings and provided it with the funding to do so, it is the obligation of that office, not this Court, to utilize those resources in an efficient and effective manner. With regard to counsel's repeated assertions that she is unable to meet the Court's deadlines, the Court notes that she could accomplish the assigned tasks more quickly if she would refrain from filing unnecessary and/or repetitious motions.

As to the merits of counsel's current motion, the Court recognizes that the PCDO will be unable to meet the previously-scheduled July 30 deadline for filing an amended petition. In its original scheduling order, the Court set a status conference for September 2. On that date, the Court will expect counsel to explain in detail the tasks she has completed as well as those she has yet to complete. The Court will then issue an order setting a new date for the filing of the amended petition.

The Court declines petitioner's invitation to enter new findings of fact regarding the expert witness discovery issue. The Court also declines to reconsider the

conclusions set forth in the order addressing that issue. If counsel believes the Court erred by reaching those conclusions, she may challenge the Court's ruling in an appeal following the conclusion of this matter or request that the appellate courts accept an interlocutory appeal.

ENTERED this the ____ day of July, 2003.

Cheryl Blackburn
Judge

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