

IN THE CIRCUIT COURT FOR THE 19<sup>TH</sup> JUDICIAL DISTRICT  
MONTGOMERY COUNTY, TENNESSEE  
DIVISION III

PAUL DENNIS REID, JR. )  
By and through Linda Martiniano, )  
Next Friend )  
PETITIONER )  
vs. )  
STATE OF TENNESSEE )  
RESPONDENT )

FILED  
6/21, 2006 10:57 A.M./P.M.  
CHERYL J. CASTLE, CLERK  
CIRCUIT COURT CLERK  
BY: [Signature] D.C.

No. 38887

Capital Case  
Post-Conviction  
**Execution Date: June 28, 2006**

**ORDER**

This matter comes before the Court upon a "Motion for Stay of Execution Pending TRAP 3 Appeal of Right of Dismissal of Post-Conviction Petition" filed by the Post-Conviction Defender's Office ("PCDO"). The motion was filed as a result of this Court's order dated June 13, 2006 in which the Court concluded the submissions failed to establish a threshold showing that Mr. Reid is presently incompetent to proceed with post-conviction relief. In that order, the Court concluded that any stay of execution should be sought via the appropriate court.

Having reviewed the instant motion and authorities cited therein, the Court concludes it has no authority to grant such a stay. Accordingly, the motion must be denied.

## I. Relevant Procedural Background

Even though this case has an extensive procedural background, the Court will address only the relevant recent history. The Tennessee Supreme Court affirmed Mr. Reid's convictions and sentences on May 25, 2005. State v. Reid, 164 S.W.3d 286 (Tenn. 2005). By order of that Court the execution was scheduled for September of 2005. On September 23, 2005, the PCDO filed an unsigned and unverified petition for post-conviction relief and requested a stay of the execution. This Court entered an Order staying the execution.

On May 4, 2006, the Tennessee Supreme Court released Holton vs. State and Reid vs. State, \_\_\_ S.W.3d \_\_\_, Tenn. Sup. Ct. No. M2005-01870-SC-S10-PD and No. M2005-02398-SC-S10-PD (filed May 4, 2006 at Nashville) ("Holton/Reid"). The Holton/Reid opinion set out the requirements for proceeding as a "next friend" in the post-conviction context and the requisite threshold showing of present mental incompetence. The Holton/Reid Court dismissed Mr. Reid's September 2005 petition finding, among other things, that the trial court lacked jurisdiction to consider the petition.

On May 23, 2006, the PCDO filed a motion for a stay of execution and appointment of counsel in conjunction with a purported "next friend" petition for post-conviction relief. The request for a stay hinged upon the Court's finding that a certain

individual or individuals (Linda Martiniano -- Mr. Reid's sister, Kelly Gleason and Connie Westball of the PCDO) qualified to proceed as "next friend" and that the petition and attachments established a threshold showing of Mr. Reid's present mental incompetence.

On June 12, 2006, the Court convened to address the motion. Ms. Gleason of the PCDO acknowledged her office had not been appointed due to the procedural posture of the case; however, Ms. Gleason appeared for the purpose of advancing her position as to the Holton/Reid ruling and subsequent proceedings. With Holton/Reid as authority, the Court reviewed the purported petition and attachments and concluded that even though Linda Martiniano qualified as "next friend," the petition and submissions failed to establish the requisite threshold showing of present mental incompetency of Mr. Reid.

In the present motion, the PCDO moves this Court for an expedited hearing to consider its motion for a stay pending a Tennessee Rule of Appellate Procedure 3 ("TRAP") appeal of the June 13 Order.

## II. Discussion

Initially, the Court notes that the PCDO requested an expedited hearing. Having reviewed the Motion for a Stay filed by the PCDO and the authority cited therein, the

Court concludes a hearing will not be necessary. As set out below, in the interest of expediency, the Court finds a hearing on the motion would not substantially add to the legal argument presented in the motion.

The core issue in the instant motion is whether this Court has the authority to grant a stay of an execution date set by our supreme court. Based on a review of the statutory and case law, along with the rules of procedure, this Court has no express authority to grant a stay under the present circumstances.

In its June 13, 2006 Order, this Court found the petition and submissions failed to meet the requisite threshold showing established in Holton/Reid. At the conclusion of the Order, the Court noted that the motion to stay was denied and that further relief from the stay should be directed to the appropriate court.

The basis of the Court's holding as to the stay was multi-faceted. First, the execution date was set by the Tennessee Supreme Court. As discussed below, this Court has very limited authority to stay the supreme court's scheduled execution date. The authority to grant a stay in this case hinged upon the Court's acceptance of the post-conviction petition which had not been signed/verified by the petitioner. In Holton/Reid, the September 2005 unsigned petition was dismissed because the invalid petition gave no jurisdiction to the trial court. The "next friend" petition necessarily carried with it a prerequisite of at least a threshold showing of mental incompetence.

Based on Holton/Reid, it seems the petition could only be accepted or lodged upon resolution of the issue of Mr. Reid's present competency.

Had the Court found that the "next friend" made such a showing, the issue of Mr. Reid's competency would have been the subject of further proceedings. If Mr. Reid had been found incompetent to file a post-conviction petition, the "next friend" petition would have been lodged with the Court for consideration on the merits. On the other hand, if Mr. Reid had been found competent, he would have been required to proceed on his own petition, should he so choose, with the appointment of counsel via the established statutory procedure.

Here, the inquiry ended much earlier. In its June 13, 2006 Order, this Court found that Linda Martiniano qualified as "next friend"; however, the Court concluded that the requisite threshold showing of present incompetency had not been made. Because of this Court's finding, no post-conviction petition was accepted by this Court.

Again, had the threshold showing been made, this Court, at best, would have had a pending present competency determination. However, even at that point, no petition would have been properly lodged before the Court. The proper post-conviction petition for consideration by this Court (petition filed by "next friend" or petition filed by Mr. Reid), if any, would not have been determined until the competency issue was resolved as discussed above. As the Holton/Reid Court noted, this trial court is

without jurisdiction to consider a petition not properly before it.

In the instant motion, the PCDO cites Tennessee Code Annotated § 40-30-120(d), Recor v. State, 489 S.W.2d 64 (Tenn. Crim. App. 1972), and Supreme Court Rule 28, Section 10(c) in support of its motion for a stay. However, none of these authorities support the precise proposition presented to this Court in the present case.

First, Tennessee Code Annotated Section 40-30-120 enumerates the circumstances under which a stay may be granted in the post-conviction context. Under section (a), the [trial] court "shall issue a stay of the execution" set by the Tennessee supreme court "upon the filing of a petition for post-conviction relief." Tenn. Code Ann. § 40-30-120(a). The same section goes on to say that "[t]he execution date **shall not be stayed** prior to the filing of a petition for post-conviction relief **except upon a showing by the petitioner of the petitioner's inability to file a petition prior to the execution date . . . .**" Id (emphasis added).

Here, the phrase "except upon a showing by the petitioner of the petitioner's inability to file a petition" reasonably could be applied to the Holton/Reid scenario. The Holton/Reid court established the procedure for proceeding as "next friend" and the applicable standard for determining if the parties have made a threshold showing of present mental incompetence. Pursuant to section (a), the execution date cannot be stayed absent some showing of inability to file a petition. In its June 13 Order this

Court found that such a showing had not been made.

Further, Tenn. Code Ann. § 40-30-120 contemplates a valid petition for post-conviction relief being filed. Because the primary focus of Holton/Reid was the validity of a post-conviction petition based on the claim of present mental incompetence, it is reasonable to conclude that failure to make the threshold showing renders the petition invalid. As such the trial court never obtains jurisdiction to consider the merits of a petition for post-conviction relief. Under section (a) a stay cannot be granted.

The other bases for granting a stay set out in Tenn. Code Ann. § 40-30-120 illustrate the limited authority of a trial court to grant a stay. Section (d), cited by the PCDO in support of the present motion for a stay, simply indicates the motion for a stay must be presented first to the court where the petition is filed. However, section (d) must be read in the context of the entire code section as to when a stay may be granted at all by the trial court.

Similarly inapplicable are Supreme Court Rule 28 Section 10(C) and Recor v. State also cited by the PCDO. Rule 28 Section 10(C) provides that "[e]ither party may request a review of a trial court's ruling on a motion for stay of execution by filing a motion for review in the Tennessee Court of Criminal Appeals within five (5) days of the trial court's ruling on the stay of execution." Tenn. Sup. Ct. Rule 28 § 10(C). This

review procedure sheds no light on the trial court's authority to grant a stay under the present procedural circumstances. Finally, even a broad reading of Recor lends no significant support to the objective sought by the PCDO in the present motion.

Without the express authority to grant a stay, the trial court is bound by the present procedural law. In summary, this Court ruled on a motion to stay based on a proposed "next friend" petition alleging present mental incompetence. At no time has this Court ruled on the merits of any post-conviction petition relating to Mr. Reid. Under Holton/Reid, the petition does not validly come before this Court unless and until (1) the "next friend" makes a threshold showing of present mental incompetence of Mr. Reid;(2) the Court conducts a hearing on the merits on the issue of Mr. Reid's present mental competence and (3) following such a hearing either permits the "next friend" to proceed on the "next friend" petition (having found Mr. Reid to be presently incompetent) or requires Mr. Reid to proceed with his own petition should he so choose (having found him competent). Again, because this Court concluded the "next friend" failed to make the threshold showing, the merits of a post-conviction petition have not been presented to this Court. No ruling by this Court should be interpreted as a ruling on the merits of any petition and nothing should be interpreted as a lodging of a valid post-conviction petition. Without a lodging of such a petition, this Court has no jurisdiction.

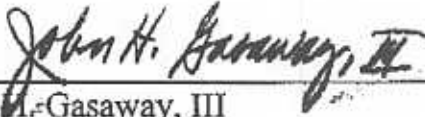


Finally, the Court would note that as of the preparation of this Order it has been informed that a Notice of Appeal (of the trial court's June 13, 2006 Order) has been filed with the Montgomery County Circuit Clerk's Office. Said filing may place this matter in the purview of the Court of Criminal Appeals and further outside the jurisdiction of this Court.

### III. Conclusion

For the foregoing reasons, the PCDO Motion for Stay Pending Rule 3 Appeal of Right of Dismissal of Post-Conviction Petition is hereby DENIED.

IT IS SO ORDERED, this the 21<sup>st</sup> day of June, 2006.

  
\_\_\_\_\_  
John H. Gasaway, III  
Circuit Judge