

**NO. 06-5860**

**IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

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**LINDA MARTINIANO**  
Next Friend for Paul Dennis Reid  
*Petitioner-Appellee*

v.

**Ricky Bell, Warden**  
*Respondent-Appellant*

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**ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE**

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**SUPPLEMENTAL RESPONSE IN OPPOSITION  
TO STATE'S MOTION TO  
VACATE STAY OF EXECUTION**

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**THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION  
IN THIS FIRST FEDERAL HABEAS CORPUS ACTION**

(1) This case involves a first federal habeas corpus action filed within the AEDPA statute of limitations. As the lower court commented at the start of yesterday's hearing, and as counsel for the state did not dispute, Mr. Reid would be summarily entitled to a stay of execution and the appointment of counsel as a matter of federal law if he filed his own motion seeking same. However, his sister has sought to act in his place because, as the district court found at a preliminary hearing on the matter, there is now a reasonable doubt based upon substantial (and un-rebutted) evidence that Mr. Reid is not competent to proceed. If the sister prevails on this question, then she has and can assert the same rights that Mr. Reid would have if competent. That is, if Reid is not competent, then, given that this is a first habeas action, the sister would be entitled to seek and the Court would order a stay and the appointment of counsel.<sup>1</sup>

(2) The State has not sought to appeal the lower court's finding that there is a legitimate issue *vis-a-vis* competency, and that the law requires a full and fair hearing on the matter. At the close of the hearing yesterday, the Court advised the

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<sup>1</sup> The State's reliance on *Hill v. McDonough*, \_\_S.Ct. \_\_, 2006 WL 158470 (June 12, 2006), and the equities involved in adjudicating a §1983 action, is misplaced. Hill has nothing to do with the well-recognized (and not contested below) requirement that a death-sentenced inmate receive a stay of execution to pursue a timely first federal habeas corpus petition.

State that it would certify that issue for the State if the State requested, and the State declined. Thus, the State does not argue here that the record as it stands requires a full hearing on incompetency. The record establishes a reasonable doubt.

(3) Contrary to the State's representations in this Court, the district court did not hold, in substance or form, that a stay of execution was mandatory in this case. The Court was prepared to conduct a full evidentiary hearing yesterday, and ostensibly today, if necessary, to determine the issues raised, and advised the State it was prepared to move forward *instanter*. The only reason a stay was entered was because the State, after litigating and losing the "preliminary hearing" showing of incompetency, belatedly told the Court it could not forward without an expert of its own. As was shown in the original response to the motion to vacate, the State's complaint of having been "hamstrung" in its ability to "defend" the action herein is embarrassingly lame. The facts show that the State has been dilatory in failing to prepare for what the district court noted all parties knew was going to happen:

(a) The parties have been litigating Reid's competence in state court for years. *See* Initial Response to State's Motion to Vacate. All of the witnesses listed in the appendix to the federal petition filed below **have been identified for the State since 2003** (for the most part), **or since the State court competency litigation began in September 2005.**

(b) With full knowledge of who all of these witnesses were, the State's position in state court on incompetency was that these witnesses and experts could not establish incompetency under the standard the State urged the Tennessee court to adopt for incompetency—the *Nix* standard. Litigation on this standard has been ongoing since September of last year, with the State Supreme Court announcing that the *Nix* standard applied on June 26, 2006.

(c) The State declined the lower court's offer that they have Reid evaluated in 2003, and never sought to have an evaluation since that time.

(d) The State's strategy has always been to argue that there is no reasonable doubt about Reid's competency. By not appealing the lower court's ruling on that issue, the State has conceded that there in fact has been a reasonable doubt established.

(e) Just because the State's chosen strategy failed does not mean that a stay should not issue just because the State did not have time to change to another strategy. She who seeks equity must do equity.

(4) The record reflects a reasonable doubt about a death-sentenced inmate's competency to proceed and competency to be executed, which the State has not appealed. The issue before this Court is whether the lower court abused its discretion by agreeing to hold a full hearing on that issue, but not then doing so at the State's request. The State does not come before this Court with clean hands.

(5) Had the hearing below continued without interruption, significant additional evidence would have been introduced to prove Reid's incompetence and incompetence to be executed. Several more mental health experts and lay persons, records from years of mental health records, and significant evidence that Reid had deteriorated since 2003 would have been introduced. By truncating the hearing the district court was prepared to finish, and then opposing a stay required solely by the State's request for an expert, the State has unfairly prevented a full record from being developed.

(6) The State urges this Court to allow the execution of a person whose insanity is uncontested, and about whom there is a reasonable doubt about competency, because lawyers for the man's sister allegedly did not act quickly enough to protect him. In fact, counsel for the State could have had the hearing in this case over and done with, and we would be proceeding with a next friend now or Mr. Reid would have been executed. The State's own strategy decisions prompted the stay and the State ought not to be allowed to complain.

### **CONCLUSION**

Wherefore, because the lower court did not abuse its discretion by entering a stay of execution, this Court should deny the State's Motion to Vacate Stay of Execution of Death Sentence.



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### CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of this Motion was delivered electronically to Jennifer L. Smith, Associate Deputy Attorney General, Criminal Justice Division, P.O. Box 20207, Nashville, TN 37202-0207 on this the 28th day of June, 2006.



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Henry Martin