

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

PHILIP RAY WORKMAN v. STATE OF TENNESSEE

No. M1999-01334-SC-DPE-PD

Filed October 5, 2000 - 9:30 a.m.

CONCURRING AND DISSENTING ORDER

The last time this case was before our Court, in Philip Workman v. State, 22 S.W.3d 807 (Tenn. 2000), I filed a separate Concurring and Dissenting Order to express my dissent from the majority's decision to set an execution date for Workman. I agreed with the majority then, as I do now, that "there exists . . . no procedure, no method, no means by which the conviction or the sentence or the process through which they were produced can be further tested or scrutinized" and that Workman's conviction and sentence are "final as a matter of law." Id. at 816 (Birch, J., concurring and dissenting).

I dissented, however, from the majority's decision to deny Workman's Motion for Certificate of Commutation, which would have recommended to the Governor that "there were extenuating circumstances attending the case and the punishment ought to be commuted." Id. (Birch, J., concurring and dissenting); see also Tenn. Code Ann. § 40-27-106 (1997). Consequently, I separately addressed Workman's request for a recommendation of commutation and certified to Governor Sundquist that Workman's sentence, in my opinion, should be commuted to life imprisonment either with or without parole.

I continue to adhere to the views I expressed in that separate Concurring and Dissenting Order. Thus, I cannot concur in the majority's decision to set an execution date.

ADOLPHO A. BIRCH, JR., JUSTICE