

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

<b>PHILIP R. WORKMAN,</b>	)	
<b>Petitioner-Appellant,</b>	)	
	)	
<b>v.</b>	)	<b>Nos. 96-6652, 00-5367</b>
	)	
<b>RICKY BELL, Warden,</b>	)	
<b>Respondent-Appellee.</b>	)	

**RESPONSE TO PETITIONER’S “MOTION TO  
DECLARE VOID MARCH 30, 2001, EXECUTION DATE”<sup>1</sup>**

**INTRODUCTION**

Workman has moved this Court to declare that a stay of execution of Workman’s sentence, issued pursuant to the Court’s order of January 26, 2001,<sup>2</sup> remains in effect. By that order, a majority of the judges of this Court, sitting en banc, agreed to recall the Court’s mandate of October 4, 2000, and extend a stay of execution until final disposition of the petition for writ of certiorari and for writ of habeas corpus that Workman had brought before the Supreme Court. In support of his motion, Workman asserts that, although the Supreme Court denied both of his petitions on February 26, 2001, there has nevertheless been no final disposition of those petitions, because he has twenty-five days in which to file petitions for rehearing. On the basis of this assertion, Workman further moves that this Court declare “illegal, void and unenforceable” the February 28, 2001, order of the

---

<sup>1</sup> The motion is fully entitled: “Motion to Declare Void the March 30, 2001, Execution Date and to Declare this Court’s January 26, 2001, Order Granting Stay of Execution.”

<sup>2</sup> The Court’s order is fully entitled: “Order Granting Stay of Execution.”

Tennessee Supreme Court, resetting Workman's execution date to March 30, 2001. Workman's position is fatally flawed for a number of reasons and, accordingly, his motion should be denied in all respects.

## ARGUMENT

### I. THE TENNESSEE SUPREME COURT HAS NOT ACTED IN CONTRAVENTION OF ANY ORDER OF THIS COURT.

Workman contends that a stay of execution of his death sentence remained in effect on February 28, 2001, and that the order of the Tennessee Supreme Court resetting the date for his execution is therefore void.<sup>3</sup> In support of this contention, Workman relies on 28 U.S.C. § 2251, which provides that a federal court in which a habeas corpus petition has been filed, or is on appeal, "may" stay state court proceedings as to any matter involved in the habeas corpus petition. Neither this Court's stay order of January 26, 2001, nor its stay order of April 4, 2000 — the dissolution of which was the subject of the October 4, 2000, mandate — purported to enter such a broad order, however. Instead, these orders prohibited the State of Tennessee only from executing Workman's death sentence. *Compare Levine v. Torvik*, 986 F.2d 1506, 1509 (6th Cir. 1993)(appeal in habeas case from district court's stay of future state court proceedings). But the State of Tennessee did not execute Workman's death sentence on February 28, 2001; its highest court merely reset the date for such an event, and then only in the wake of the Supreme Court's orders denying Workman's two petitions. Even assuming, then, that a stay of execution remained in effect on February 28, 2001, it did nothing to render invalid the Tennessee Supreme Court's order resetting Workman's execution

---

<sup>3</sup> Tennessee's execution date has previously set for January 11, 2001.

date for March 30, 2001.

**II. THE STAY OF EXECUTION ISSUED BY THIS COURT AUTOMATICALLY DISSOLVED BY ITS OWN TERMS WHEN THE SUPREME COURT DENIED WORKMAN'S PETITION FOR WRIT OF CERTIORARI.**

This Court's order of January 26, 2001 — granting Workman's motion to recall the October 4, 2000, mandate and for a stay of execution — specifically provided that "the stay of execution shall remain in place until the final disposition by the Supreme Court of the actions brought before it by the petitioner," *i.e.* Workman's petition for writ of certiorari and original application for writ of habeas corpus.<sup>4</sup> On February 26, 2001, the Supreme Court denied both of Workman's petitions. Workman contends, nevertheless, that the stay of execution remained, and remains, in place. In support thereof, Workman contends that, because he has the right to petition for rehearing, the February 26 action of the Supreme Court did not constitute a "final disposition." The contention either ignores or overlooks unambiguous provisions of both the Federal Rules of Appellate Procedure and the Supreme Court's own rules.

The Supreme Court's denial of a petition for certiorari is a final disposition. Fed.R.App.P. 41(d)(2)(A), like this Court's order of January 26, provides that any stay of a circuit court's mandate,<sup>5</sup> pending the filing of a petition for a writ of certiorari in the Supreme Court, "continues

---

<sup>4</sup> The stay of execution shall remain in place until the final disposition by the Supreme Court of the actions brought before it by the petitioner, *i.e.* Workman's petition for writ of certiorari and original application for writ of habeas corpus.

<sup>5</sup> The stay of execution shall remain in place until the final disposition by the Supreme Court of the actions brought before it by the petitioner, *i.e.* Workman's petition for writ of certiorari and original application for writ of habeas corpus.

until the Supreme Court's final disposition." The rule further provides, however, that the circuit court "must issue the mandate immediately when a copy of a Supreme Court order denying the petition for writ of certiorari is filed." Fed.R.App.P. 41(d)(2)(D). See 6 Cir. R. 41; see also 6 Cir. I.O.P. 41 ("the stay of mandate shall continue until the Supreme Court acts on the petition").<sup>6</sup> These provisions clearly contemplate that the denial of a petition for writ of certiorari constitutes a final disposition thereof. No reference is made to any further effect of the filing of any petition for rehearing in the Supreme Court. Moreover, the Supreme Court's own rules specifically provide that the order of denial of a petition for writ of certiorari "will not be suspended pending disposition of a petition for rehearing except by order of the Court or a Justice." U.S.S.Ct.R. 16.3; *Richmond v. Arizona*, 434 U.S. 1323, 1325 (1977)(Rehnquist, J., in chambers). The Supreme Court's order denying Workman's petition for certiorari was therefore a final disposition and the stay of execution of January 26, 2001, automatically dissolved by its own terms.<sup>7</sup>

**III. THIS COURT LACKED JURISDICTION TO ORDER A STAY OF EXECUTION ON THE BASIS OF WORKMAN'S PETITION FOR AN ORIGINAL WRIT OF HABEAS CORPUS; IN ANY EVENT, A FINAL DISPOSITION OF THIS PETITION WAS LIKEWISE REACHED WHEN THE SUPREME COURT DENIED IT.**

---

<sup>6</sup> The rule further provides, however, that the circuit court "must issue the mandate immediately when a copy of a Supreme Court order denying the petition for writ of certiorari is filed." Fed.R.App.P. 41(d)(2)(D). See 6 Cir. R. 41; see also 6 Cir. I.O.P. 41 ("the stay of mandate shall continue until the Supreme Court acts on the petition").

<sup>7</sup> Although the issuance of the mandate pursuant to Fed.R.App.P. 41(d)(2)(D) is not binding until the circuit court is compelled to perform upon receipt of the Supreme Court's certification, here, because the Court's order of January 14 specifically provided for the stay to remain in place until the Supreme Court's disposition of the petition; *i.e.*, until February 14, the dissolution of the stay of execution is not dependent upon the final disposition of the mandate.

While this Court's order of January 26, 2001, recalled its mandate and extended a stay of execution pending Workman's petition for writ of certiorari, it also purported to base a stay of execution on Workman's petition before the Supreme Court for an original writ of habeas corpus. To the extent the order was so based, though, this Court lacked jurisdiction to issue a stay of execution. Stays are intended to maintain the status quo and preserve the court's jurisdiction. *See Levine v. Torvik, supra*, 986 F.2d at 1518 n. 10. 28 U.S.C. § 2251, on which petitioner relies for the scope of this Court's power to issue a stay in a habeas case, provides that a stay may be issued by a judge before whom a habeas petition is pending, either before or after final judgment, or pending appeal. Workman's petition for writ of habeas corpus was not before this Court, nor was it pending in the Supreme Court on appeal from this Court. Instead, it had been filed as an original matter directly in the Supreme Court. *See Felker v. Turpin*, 518 U.S. 651, 661 (1996). Even 28 U.S.C. § 1651, the All Writs Act, limits relief to the issuance of orders in aid of a court's jurisdiction. This Court's appellate jurisdiction under 28 U.S.C. §§ 1291, 1292 does not extend to the Supreme Court's authority to hear a petition for an original writ of habeas corpus. Accordingly, Workman cannot rely on this aspect of the Court's January 26 order to support his position.

In any event, and even if this Court had jurisdiction to issue a stay of execution pending a petition for writ of habeas corpus in the Supreme Court, the Supreme Court's denial of Workman's petition was no less a final disposition than the contemporaneous denial of certiorari. Consequently, and for the reasons discussed above, the stay of execution automatically dissolved upon such denial. Contrary to Workman's assertion, his opportunity to petition for rehearing thereof does not alter this conclusion. The Rules of the Supreme Court simply make no provision for the suspension or stay of the denial of a petition for writ of habeas corpus upon the filing of a petition for rehearing.

*Compare* U.S.S.Ct.R. 45(a)(in cases on review from a state court, the filing of a petition for rehearing stays the mandate pending disposition of the petition).<sup>8</sup> While the filing of a petition for rehearing of a judgment or decision on the merits, pursuant to U.S.S.Ct.R. 44.1, *does* operate to stay the judgment, *Richmond v. Arizona, supra*, 434 U.S. at 1325, the denial of a petition for an original writ of habeas corpus is not, without more, an adjudication on the merits. U.S.S.Ct.R. 20.4(b); *Ex parte Abernathy*, 320 U.S. 219, 220 (1943)(per curiam).<sup>9</sup>

## CONCLUSION

For the reasons advanced, Workman’s “Motion to Declare Void March 30, 2001, Execution Date and to Enforce This Court’s January 26, 2001, Order Granting Stay of Execution” should be denied.

---

<sup>8</sup> Rule 44 is inapplicable to an original application to the Supreme Court for a writ of habeas corpus as it is not a “case or matter” brought to court.

<sup>9</sup> There is also the case of habeas petitions for a writ of certiorari. *See, e.g., Knight v. Florida*, 344 U.S. 490 (1953)(opinion of Stevens, J., respecting the denial of petitions for a writ of certiorari). U.S.S.Ct.R. 44.1 makes separate provision for the filing of petitions for rehearing of the denial of petitions for a writ of certiorari or for a certiorari writ.

Respectfully submitted,

PAUL G. SUMMERS  
Attorney General & Reporter

---

MICHAEL E. MOORE  
Solicitor General

---

GORDON W. SMITH  
Associate Solicitor General

---

JOSEPH F. WHALEN  
Assistant Attorney General  
425 Fifth Avenue North  
Nashville, Tennessee 37243  
(615) 532-7911

**CERTIFICATE OF SERVICE**

I hereby certify that a true and exact copy of the foregoing document has been forwarded to counsel for the petitioner by mailing same, postage prepaid, to Christopher M. Minton, Office of the Post-Conviction Defender, 530 Church Street, Suite 600, Nashville, Tennessee, 37243, on this the \_\_\_\_ day of March, 2001.

JOSEPH F. WHALEN  
Assistant Attorney General