

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

PHILIP RAY WORKMAN v. STATE OF TENNESSEE

No. M1999-01334-SC-DPE-PD - Filed May 4, 2004

DISSENTING ORDER

I respectfully dissent from the order setting the date for the execution of Philip R. Workman. I have previously dissented from rulings allowing the case to proceed in this Court on the basis of my belief that Workman has raised valid legal issues concerning whether the death of the victim was the proximate result of “friendly fire” and not his own unlawful acts. Specifically, proof that the “eyewitness” did not see Workman shoot the officer and proof that the wound which caused the officer’s death is inconsistent with the type of wound which would have been caused by a bullet from Workman’s gun dramatically affect the evidence in this case and, in my opinion, may affect his eligibility for the death penalty. See State v. Severs, 759 S.W.2d 935 (Tenn. Crim. App. 1988).

Additionally, as I have previously noted, I believe this Court is under a statutory obligation to perform a proportionality review which includes a consideration of the newly-discovered evidence presented in the hearing on the writ for error coram nobis.

Finally, I am persuaded that because a habeas corpus petition related to this case is, by agreement of the State, currently being held in abeyance in Federal District Court pending a decision by the Sixth Circuit in Abu-Ali Abdur’Rahman v. Ricky Bell, Nos. 02-6547, 02-6548, it would be prudent for this Court to refrain from setting an execution date until those proceedings are finally resolved. Although I recognize the case has completed the standard “three tier” review and is thus technically “ripe” for setting of an execution date, see Coe v. State, 17 S.W.3d 251 (Tenn. 2000), the uncertainty of the evidence used to convict Workman and the finality of the death sentence convinces me that there should be no rush to consummation.

For these reasons, I dissent from the order setting a date for Workman’s execution.

ADOLPHO A. BIRCH, JR.,