

ORIGINAL

**IN THE SUPREME COURT OF TENNESSEE
NASHVILLE DIVISION**

FILED
2007 OCT 24 PM 3:22

APPELLATE COURT CLERK
NASHVILLE

STATE OF TENNESSEE

V.

PAUL DENNIS REID

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No. M2003-00539-SC-DDT-DD

**MOTION FOR STAY OF EXECUTION, OR IN THE ALTERNATIVE
MOTION TO VACATE EXECUTION DATE**

COMES NOW, Paul Dennis Reid, by and through counsel, and hereby requests this Court to enter an Order staying the January 3, 2008 execution date in this case, or in the alternative to vacate the January 3, 2008 execution date for the following reasons:

1. This Court affirmed Mr. Reid's convictions and death sentences in this capital case on December 27, 2006. *State v. Reid*, 213 S.W.3d 792 (Tenn. 2006). In that opinion, as required by Rule 13, this Court set an execution date for January 3, 2008. Mr. Reid timely filed a Petition for Rehearing which this Court denied on January 17, 2007. *State v. Reid*, 2007 Tenn. LEXIS 17 (Tenn. January 17, 2007). This Court should stay or vacate the January 3, 2008 execution date for a number of reasons.

2. First, the January 3, 2008 execution date unfairly cuts short Mr. Reid's opportunity to file a state post-conviction petition. Under the state Post-Conviction Procedures Act, Mr. Reid has one year from the final action of this Court. Tenn. Code Ann. § 40-30-102 (2007). Because the final action of this Court was January 17, 2007, Mr. Reid has until January 16, 2008 in which to initiate state post-conviction proceedings. The setting of this execution dates is contrary to the provisions of T.S.C.R. 12.3 and 12.4.

3. Second, the January 3, 2008 execution date unfairly cuts short Mr. Reid's right to

seek federal habeas relief. Even if Mr. Reid were to forgo state post-conviction relief, he would still have until October 15, 2008 (at the earliest)¹ in which to file a petition for writ of habeas corpus pursuant to 28 U.S. C. §2254 challenging his convictions and death sentences.

4. Third, the January 3, 2008 execution date unfairly cuts short Mr. Reid's right to litigate his challenge to the Tennessee lethal injection protocol. Assuming, without conceding, that a one year statute of limitations applies to a death-sentenced inmate's right to challenge a state's method of execution, the Sixth Circuit has specifically held that the statute of limitations is the same as that utilized by the Anti-Terrorism and Effective Death Penalty Act for initiating federal habeas review and does not begin to run until the United States Supreme Court denies certiorari review. *Cooley v. Strickland*, 479 F.3d 412, 422 (6th Cir. 2007). Thus, under the current state of the law in the Sixth Circuit, Mr. Reid had until at least October 15, 2008, to file a complaint challenging the Tennessee Lethal Injection Protocol. Despite this fact, undersigned counsel would inform the Court that a complaint pursuant to 42 U.S.C. § 1983 challenging the Tennessee lethal injection protocol has been filed on behalf of Mr. Reid in federal court. This Court should enter a stay of execution or vacate the execution date to permit the timely and orderly litigation of that case.

5. As this Court is well aware, the United States District Court for the Middle District of Tennessee has held that the current lethal injection protocol which the Department of Corrections intends to use to execute Mr. Reid violates the Eighth Amendment to the United States Constitution. *Harbison v. Little*, M.D.Tenn. No. 3:06-1206, R. 147 (Sept. 19, 2007).

¹In this case, the United States Supreme Court did not deny certiorari review until October 15, 2007. Mr. Reid can still file a Petition for Rehearing with the United States Supreme Court. Such a petition is not due until November 9, 2007. *See* Rule 44 of the Rules of the United States Supreme Court. Counsel intend to timely file a Petition for Rehearing.

Further, in *Baze v. Rees*, U.S.No. 07-5439, the United States Supreme Court granted certiorari to answer the question whether:

the continued use of sodium thiopental, pancuronium bromide, and potassium chloride, individually or together, violate[s] the cruel and unusual punishment clause of the Eighth Amendment because lethal injections can be carried out by using other chemicals that pose less risk of pain and suffering?

Baze, *supra*, Petition For Writ Of Certiorari, Questions Presented.

6. Since the Supreme Court's action granting certiorari in *Baze*, several jurisdictions have granted stays of execution pending the outcome of *Baze*. Turner v. Texas, 551 U.S. ____ (2007) (U.S. Supreme Court)(Attached as Exhibit 1); Emmett v. Johnson, 552 U.S. ____ (Oct. 17, 2007)(U.S. Supreme Court)(Attached as Exhibit 2); State of Arizona v. Landrigan, No. CR-90-323-AP (Arizona)(Attached as Exhibit 3); American Civil Liberties Union v. Skolnick, No. 50354 (Nevada)(Attached as Exhibit 4); Alderman v. Hall, No. S08W0263 (Ga. Oct. 18, 2007) (Georgia)(Attached as Exhibit 5); Osborne v. Hall, No. S08W0267 (Ga. Oct. 22, 2007) (Georgia)(Attached as Exhibit 6); Ex Parte Heliberto Chi, No. WR-61,600-02 (Tex.Cr.App. Oct. 2, 2007)(Texas)(Attached as Exhibit 7).²

7. Respectfully, this Court's recent order denying Pervis Payne's Motion to Vacate Execution Date is not binding here. Mr. Payne and Mr. Reid are in vastly different procedural

²Recently, the Florida Supreme Court heard arguments on the constitutionality of the three-drug lethal injection protocol, and at argument, "the justices suggested that the state would not be executing any inmates anytime soon, as the U.S. Supreme Court considers a Kentucky case over whether the three-drug lethal-injection cocktail used there, in Florida and 35 other states violates the Eighth Amendment's safeguards against cruel and unusual punishment." *Court Weighs Fairness Of Death Penalty Steps*, Miami Herald, Oct. 12, 2007, p. B6 (Exhibit 8). Also, in Oklahoma, the Oklahoma Attorney General has, "suggest[ed] that an execution date not be set pending resolution of *Baze* and that the appropriateness of setting an execution date be revisited when *Baze* has been decided by the United States Supreme Court." Terry Lyn Short v. State Of Oklahoma, No. D-97-540, State's Notice Of Exhaustion Of State And Federal Appeals, p. 11 (Oct. 3, 2007).

postures. Unlike Mr. Payne, Mr. Reid has not yet challenged his underlying criminal convictions and capital sentences in state post-conviction or federal habeas. Unlike the execution date for Mr. Payne, his second post-denial of certiorari review on his federal habeas claims, the execution date set here is, in the normal case, *pro forma*.³ Unlike Mr. Payne, the equitable concerns of finality and delay do not enter into the equation. Mr. Reid is constitutionally entitled to further litigate his underlying criminal conviction and capital sentences. Moreover, unlike Mr. Payne, Mr. Reid is clearly entitled to litigate his lethal injection complaint having filed it just over a week after the Supreme Court denied his petition for writ of certiorari and prior to the filing of a Petition for Rehearing of the denial of cert petition in the United States Supreme Court.

8. In addition, this Court's decision upholding the former lethal injection protocol in an unrelated state court matter in Abdur'Rahman v. Bredeesen, 181 S.W.3d 292 (Tenn. 2005), does not preclude the relief requested here. Mr. Reid was not a party to the *Abdur'Rahman* litigation. Further, the *Abdur'Rahman* case dealt with a now revoked protocol, not the current protocol which has been found to violate the eighth amendment. Moreover, additional relevant information regarding Tennessee's current protocol is available to Mr. Reid that was never offered into evidence in *Abdur'Rahman*.

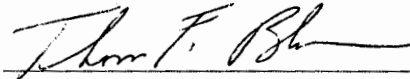
9. Given that Mr. Reid has not sat on his rights and given that a federal court has held that the method by which the State of Tennessee seeks to execute him has been found unconstitutional and given that the United States Supreme Court will speak to this issue in the

³As this Court is well aware, the issue of Mr. Reid's competence has been litigated in state and federal courts. Mr. Reid has been found incompetent to proceed by the United States District Court for the Middle District of Tennessee, without opposition by the State Attorney General's Office. *Martiniano v. Bell*, No. 3:06-0632, Docket Entry No. 54 (M.D. Tenn. August 24, 2006).

very near future, a stay of execution is warranted here.

WHEREFORE, for all of the foregoing reasons, this Court should stay or vacate Mr. Reid's execution date.

Respectfully submitted,



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Attorney for Appellant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing MOTION FOR STAY AND OR TO VACATE EXECUTION DATE was placed in the United States Mail, postage pre-paid, to Ms. Jennifer Smith, Assistant Attorney General, 425 Fifth Avenue North, Nashville, Tennessee, 37243 on this the ___ day of October, 2007.


Attorney for Appellant