

No. \_\_\_\_\_

DEATH PENALTY CASE  
Execution Scheduled: June 28, 2006

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IN THE  
SUPREME COURT OF THE UNITED STATES

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RICKY BELL  
Applicant

v.

LINDA MARTINIANO  
Next Friend for Paul Reid  
Respondent

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MOTION TO VACATE STAY  
OF EXECUTION OF DEATH SENTENCE

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PAUL G. SUMMERS  
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Solicitor General

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## JUSTIFICATION FOR ORIGINAL APPLICATION IN THIS COURT

The State of Tennessee requests that this Court vacate the stay of execution issued on June 27, 2006, by the United States District Court for the Middle District of Tennessee. (Attachment 1) As set forth below, this original application in this Court is based upon the Sixth Circuit's delay in ruling on a motion to vacate the stay, which is currently pending in that Court.

On June 27, 2006, the United States District Court for the Middle District of Tennessee entered a stay of the June 28th execution of Paul Dennis Reid, Jr., set by order of the Tennessee Supreme Court entered September 26, 2005. The district court, relying on an unpublished panel opinion of the Sixth Circuit in *Kirkpatrick v. Bell*, No. 03-5526, 64 Fed. Appx. 495 (6th Cir. May 5, 2003), stayed Reid's execution approximately 12 hours before the scheduled time of 1:00 a.m. The State expeditiously moved the court of appeals for an order vacating the stay, and the appellee promptly filed a response in opposition. However, in the late evening hours of June 27, 2006, counsel for the State was advised by the Clerk of the Sixth Circuit that the panel to whom the matter had been assigned would not issue a ruling prior to 1:00 a.m. on June 28, 2006. On the morning of June 28, 2006, the State filed a motion in the Sixth Circuit to expedite the Sixth Circuit's ruling on the motion to vacate. (Attachment 2) As of the filing of this motion, however, there has been no decision by the Sixth Circuit on either motion. *See Delo v. Stokes*, 495 U.S. 320 (1990) (Kennedy, J., concurring)

(criticizing Eighth Circuit for more than 24-hour delay in ruling on the State's motion to vacate stay of execution).

The State is now approximately 14 hours into a 24-hour execution order. Given the logistics of the execution process, the passage of time decreases the likelihood that the State would be able to carry out the execution in the time allowed by State law even if the stay were lifted. And the Sixth Circuit's delay in disposing of the motion to vacate may operate to deprive either party of the opportunity to seek meaningful relief in this Court after any decision by the Sixth Circuit on the pending motion to vacate. The State thus respectfully requests that the Court consider this original application for extraordinary relief in absence of a decision by the Sixth Circuit.

### STATEMENT

Paul Dennis Reid stands convicted of the first degree murder of seven individuals, committed over the course of two months between February and April of 1997. He has been sentenced to death for all seven murders. Two of those convictions and sentences were affirmed by the Tennessee Supreme Court on May 24, 2005. *State v. Reid*, 164 S.W.3d 286 (6th Cir. 2005). On September 26, 2005, the Tennessee Supreme Court set a June 28, 2006, execution date. *State v. Reid*, No. M2001-02753-SC-DDT-DD (Tenn. Sept. 26, 2005) (Attachment 3). Reid has affirmatively and repeatedly requested since 2001 that he be allowed to forego his appeals from the seven death sentences that he has received. In the case at hand, when Reid chose not to file a petition for post-

conviction relief in state court, Reid’s sister, Linda Martiniano, on May 23, 2006, sought to proceed on his behalf as next friend. In addition, she moved for a stay of Reid’s June 28th execution. Following a hearing, the Montgomery County Circuit Court, on June 13, 2006, dismissed the petition and the motion for appointment of counsel after finding that the submissions failed to satisfy the prerequisites for next friend standing as set forth by the Tennessee Supreme Court in *Reid v. State*, No. M2005-01870-SC-S10-PD (Tenn. May 4, 2006). Both the Tennessee Court of Criminal Appeals and the Tennessee Supreme Court denied motions for stay of execution. In its order, the Tennessee Supreme Court specifically noted that, “[d]espite the imminence of the June 28, 2006, execution date, Martiniano and the Post-Conviction Defender did not file the ‘next friend’ post-conviction petition until nineteen days after this Court’s decision [outlining Tennessee’s “next friend” procedure]. After dismissal of the petition, a week passed before a notice of appeal was filed.”<sup>1</sup> *State v. Paul Dennis Reid, Jr.*, No. M2001-02753-SC-DDT-DD, No. M2006-01294-SC-28S-PD (Tenn. June 26, 2006) (Attachment 4). The court further noted that “Martiniano has an insufficient likelihood of success on the merits of the post-conviction appeal to warrant a stay of execution.” *Id.*

At or around 6:00 p.m. on June 26, 2006, Martiniano filed a Consolidated

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<sup>1</sup>Even then, Martiniano did not seek a stay of execution for several more days. Martiniano actually filed a motion for stay of execution after close of business on Thursday, June 22, 2006, six days before Reid’s execution date.

Motion for Stay of Execution, for Appointment of Counsel, and Initial Petition for a Writ of Habeas Corpus by Next Friend on Behalf of Paul Reid (Doc. Entry No. 1-3) and Motion to Proceed in Forma Pauperis in the United States District Court for the Middle District of Tennessee. That same night, the district court scheduled a hearing for the following morning, June 27, 2006, at 9:00 a.m. (Doc. Entry No. 7)

At the hearing, Martiniano presented the expert testimony of Dr. George W. Woods, Jr., and other documentary evidence, to demonstrate that Reid lacks the capacity to appreciate his position and make a rational choice with respect to continuing or abandoning further litigation and that he suffers from a mental disease, disorder, or defect that may substantially affect his capacity in the premises. *See Rees v. Peyton*, 384 U.S. 312, 314 (1966) (establishing standard of competency in next-friend proceeding). Being in no position (in less than one day) to obtain an independent expert evaluation or to subject petitioner's evidence to meaningful adversarial testing, the State presented no countervailing proof.

At the conclusion of a three-hour hearing, the district court concluded that there was sufficient evidence to raise a reasonable doubt about Reid's competence under *Kirkpatrick v. Bell*, No. 03-5526, 64 Fed. Appx. 495 (6th Cir. May 5, 2003) (Attachment 5). Although the district court "indicated that it was fully prepared to proceed with the full evidentiary today," the State contended that it was unable to present meaningful proof under the circumstances, since it would require an opportunity to evaluate Reid

prior to any such hearing. Given the late filing of the petition, however, the State objected to a stay of execution. Nonetheless, the district court concluded that, under *Kirkpatrick*, a stay of execution “must issue” until such time as “the parties have had a full opportunity to hold a full evidentiary hearing on the issue of Mr. Reid’s competency.” (Doc. Entry No. 10) Because the district court abused its discretion in granting a stay of execution under the circumstances of this case in the absence of a properly filed federal habeas petition, the State immediately filed a notice of appeal from the district court’s stay order and a motion to vacate the stay in the Sixth Circuit. As previously stated, the Sixth Circuit has thus far declined to rule on the State’s motion to vacate.

## ARGUMENT

### I. THE DISTRICT COURT ABUSED ITS DISCRETION BY GRANTING A STAY OF EXECUTION IN THIS MATTER.

By granting Reid what amounted to an automatic stay of execution in absence of evidence clearly showing that the court had jurisdiction to entertain a “next friend” habeas petition under 28 U.S.C. § 2254, the district court abused its discretion. Although Reid’s execution had been scheduled for June 28, 2006, since September 2005, the putative next friend waited until two days (one court day) before the scheduled execution to file a petition on his behalf and a motion for a stay of execution. The district court, however, concluded that it was bound to grant a stay of execution under *Kirkpatrick*.

However, the impropriety of the court's decision to grant a stay of execution in this case is made clear by the recent decision of this Court in *Hill v. McDonough*, 126 S.Ct. 2096 (2006). In *Hill*, this Court reiterated that "a stay of execution is an equitable remedy." *Id.* at 2104. Accordingly, equity must be sensitive to the "State's strong interest in enforcing its criminal judgments without undue interference from the federal courts." *Id.* A court considering a stay must apply "a strong presumption against the grant of a stay where a claim could have been brought at such a time as to allow consideration of the merits without requiring the entry of a stay." *Id.* (quoting *Nelson v. Campbell*, 541 U.S. 637, 650 (2004) ). *See also Gomez v. United States Dist. Court for Northern Dist. Calif.*, 503 U.S. 653, 654 (noting that the "last-minute nature of an application" or an applicant's "attempt at manipulation" of the judicial process may be grounds for denial of a stay). "The federal courts can and should protect States from dilatory or speculative suits . . . ." *Id.*

Here, rather than consider the equitable principles reinforced in *Hill*, the district court concluded that a stay was required under *Kirkpatrick*.

Given that the posture of this case is now the same as that in *Kirkpatrick*, *the Court must issue a stay of execution until such time as the parties have had an opportunity to hold a full evidentiary hearing on the issue of Mr. Reid's competency. The date of the hearing will be set by separate order.*

(Attachment 1, p. 3) (emphasis added). *Compare Kirkpatrick*, 64 Fed. Appx. at 496 (Upon a showing of "reasonable cause" to question competency, "we grant the stay of execution until such time as the district court has had an opportunity to conduct a full evidentiary

hearing” on the next-friend application filed by Reid’s sister, Janet Kirkpatrick).

In light of *Hill*, however, to the extent the decision in *Kirkpatrick* may be read to require the entry of a stay of execution upon a mere showing of “reasonable doubt” about a petitioner’s competency, particularly where, as in this case, such a claim is made at a time which allows the State just over twelve hours to prepare for the “full evidentiary hearing” contemplated by *Kirkpatrick* and *Harper v. Parker*, 177 F.3d 567(6th Cir. 1999), the decision does not withstand scrutiny. Indeed, the district court emphasized that *Kirkpatrick* required a full competency hearing — and concomitant stay of execution — on the basis of *any* evidence that would raise a reasonable doubt about Reid’s competence. *See Hill*, 126 S.Ct. at 2104 (“[L]ike other stay applicants, inmates seeking [a stay of execution] . . . must satisfy all requirements for a stay, including a showing of a significant possibility of success on the merits.”). Thus, far from “protecting states from dilatory or speculative suits” as required by *Hill*, the district court’s ruling rewards last-minute filings by hamstringing the State into conceding its inability to defend meaningfully against a claim of incompetence at the eleventh hour.

Martiniano may argue that *Hill* is inapplicable because 28 U.S.C. § 2251 expressly authorizes entry of a stay of execution by a judge of the United States “before whom a habeas corpus proceeding is pending.” That argument is without merit. Until a putative next friend establishes standing, there is no proper habeas petition pending that would trigger the automatic stay provision of § 2251. Thus, any stay of execution at this



juncture must necessarily be considered in light of the federal court's equitable authority, as set forth in *Hill*.

“[O]ne necessary condition for ‘next friend’ standing in federal court is a showing by the proposed ‘next friend’ that the real party in interest is *unable to litigate his own cause* due to mental incapacity, lack of access to court, or other similar disability,” *Whitmore v. Arkansas*, 495 U.S. 149, 164 (1990) (emphasis added), and “[t]he burden is on the ‘next friend’ clearly to establish the propriety of his status and thereby justify the jurisdiction of the court.” *Id.*, 495 U.S. at 165 (1990).

Just three years ago, after an evidentiary hearing at which Reid himself testified in response to questions from both the district judge and counsel for petitioner, the district court found Reid competent to waive his appeals.

The Court finds based on the bearing, demeanor and deportment of Reid, and the entire record, that Reid has knowingly, intelligently, voluntarily, and rationally decided to be executed rather than pursue further appeals and post-conviction options.

*Kirkpatrick v. Bell*, No. 3:03-0365, slip op., p. 6 (M.D.Tenn. April 28, 2003) (order denying motion for stay and for appointment of counsel). (Attachment 6) The requisite showing for “next friend” status is not satisfied “where an evidentiary hearing shows that the defendant has given a knowing, intelligent, and voluntary waiver of his right to proceed, and his access to court is otherwise unimpeded.” *Whitmore*, 495 U.S. at 165. “[Reid] was questioned by counsel and the trial court concerning his choice to accept the death sentence, and his answers demonstrate that he appreciated the consequences of

that decision.” *Id.* As the district court found,

Reid is aware he will be executed within hours. Reid knows why he is to be executed. Reid understands execution is final and irreversible. Reid knows that he has the option of staying his execution by simply pursuing appeals.

(Attachment 6, p. 7) Reid’s evidence here was not substantially different from that presented in 2003 and certainly not sufficiently more persuasive as to warrant equitable relief under the circumstances of this case. Indeed, the current allegations of incompetence are based on little more than the long-standing contention that Reid holds delusional beliefs that he is under constant governmental monitoring through scientific technology and that his legal proceedings have been scripted — beliefs which the Tennessee Supreme Court held to be insufficient to establish incompetency to stand trial, a far higher standard than this one. *Compare with State v. Reid*, 164 S.W.3d 286, 304-05 (Tenn. 2005) (Trial court’s competency determination affirmed after consideration of evidence not materially different from that presented here: “[Reid] told [Dr. Auble] that he had been under surveillance by the government for over thirteen years;” “[T]he government had radiated his body with a magnetic field, which allowed his actions to be monitored on a remote screen by the Central Intelligence Agency;” “[D]efendant believed that the judge, jury, and attorneys were playing roles during the trial that had been scripted;” “[D]efendant believed that he was being monitored by the government and that his attorneys were part of a script to kill him;” “[The defendant’s] reality is distorted. His belief that everything is predetermined at this point. That it

doesn't matter if he helps his defense or not;" "The defendant referred to one of his attorneys as 'Satan,' and he believed the attorneys, the prosecutors, and the trial judge were being controlled by a surveillance team with 'subliminal magnetic technology.'").

In order for a federal court to grant a stay of execution on the basis of a motion by a "next friend," therefore, it must be *clearly shown* that the prisoner does not have "capacity to appreciate his position and make a rational choice with respect to continuing or abandoning further litigation or . . . suffers from a mental disease, disorder, or defect which may substantially affect his capacity in the premises." *Rees*, 384 U.S. at 314. In the absence of such a showing, the federal courts lack authority to enter a stay.

The case is largely controlled by this Court's decision in *Demosthenes v. Baal*, 495 U.S. 731 (1990), in which the Court vacated a stay granted by the Ninth Circuit Court of Appeals under similar circumstances. There, a state court determination had been made that the prisoner was competent to waive further appeals, and upon the filing of a "next friend" petition, the district court conducted a hearing and denied petitioner's application for a stay of execution, holding that petitioners had failed to establish that the court had jurisdiction to entertain the petition. The Court of Appeals stayed the execution, concluding that there had been some "minimal showing" of incompetence made, and that the evidence in the record provided an "arguable basis for finding that a full evidentiary hearing on competence should have been held by the district court."

*Id.*, 495 U.S. 733-34. This Court granted the State’s motion to vacate the stay, ruling that, because the district court had concluded that petitioners had failed to establish that Baal was incompetent, citing *Whitmore*, no basis existed for an exercise of federal jurisdiction to grant a stay of execution.

We realize that last minute petitions from parents of death row inmates may often be viewed sympathetically. But federal courts are authorized by the federal habeas statutes to interfere with the course of state proceedings only in specified circumstances. Before granting a stay, therefore, federal courts must make certain that an adequate basis exists for the exercise of federal power. In this case, that basis was plainly lacking. The State is entitled to proceed without federal intervention.

*Id.*, 495 U.S. at 737.

The Ninth Circuit’s determination in *Baal* that there was “some minimum showing” of incompetence and an “arguable basis” for a full evidentiary hearing is indistinguishable from the district court’s determination here that there was “sufficient evidence to raise a reasonable doubt” for a full evidentiary hearing on the issue of competency. In neither case had the putative next friend “clearly [ ] establish[ed] the propriety of his status and thereby justif[ied] the jurisdiction of the court” to enter a stay of execution. *Whitmore*, 495 U.S. at 164. The putative next friend filed her motion for a stay two days (one court day) prior to the scheduled execution, at a time when any evidentiary hearing could only be a lopsided affair given the absence of any available avenue by which the State could seek an independent mental health evaluation prior to the filing of the next friend petition — less than 36 hours before the scheduled execution

— or the hearing in this matter. By contrast, in the week before the filing of the petition, Martiniano had the benefit of two mental evaluations by two separate experts — one on June 20, 2006, and the other on June 26, 2006. One expert appeared at the hearing before the district court on June 27, 2006, and an affidavit of the second was offered into evidence under Fed. R. Evid. 703 as a basis for that testimony.

Paul Reid was found competent to stand trial in state court on two separate occasions, including the case for which his execution is imminent,<sup>2</sup> following lengthy hearings. Indeed, Reid has never been held incompetent by any Tennessee state or federal district court.

In a case such as this one, a federal court must consider both the quality of the evidence presented and the last-minute nature of an application for a stay of execution in deciding whether to grant equitable relief. Here, Ms. Martiniano could have sought “next friend” recognition months ago — it bears emphasis that Reid’s execution was set in September 2005 and he announced his intention to forego his appeals long before that — thus affording the district court the time necessary to conduct a meaningful competency hearing without need for a stay. Instead, she waited until the eve of execution to come to court. This sort of blatant manipulation of the judicial process should not be countenanced by this Court. Viewed under the proper standard — the *Hill v. McDonough* standard — the district court’s stay of execution constituted an abuse

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<sup>2</sup>See *State v. Reid*, 164 S.W.3d 286, 306-08 (Tenn. 2005).

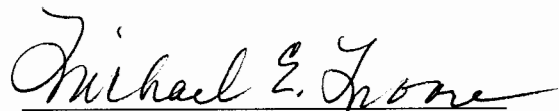
of discretion and should be vacated.

**CONCLUSION**

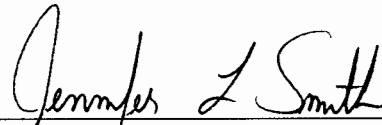
The order of the district court granting the motion for stay should be vacated.

Respectfully submitted,

PAUL G. SUMMERS  
Attorney General & Reporter



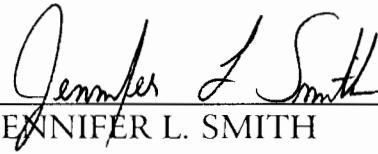
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## CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing was served by first class mail, postage prepaid, and by email, to Henry Martin, Office of the Federal Public Defender, 810 Broadway, Suite 200, Nashville, Tennessee, 37203, on this, the 28th day of June, 2006.



JENNIFER L. SMITH  
Associate Deputy Attorney General

# ATTACHMENT 1



UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

LINDA MARTINIANO )  
Next Friend for Paul Dennis Reid )  
 )  
v. ) NO. 3:06-CV-0632  
 ) JUDGE CAMPBELL  
RICKY BELL, Warden ) DEATH PENALTY

ORDER AND STAY OF EXECUTION

Pending before the Court is a Consolidated Motion for Stay of Execution, For Appointment of Counsel, and Initial Petition for A Writ of Habeas Corpus By Next Friend on Behalf of Paul Reid. The Court held a hearing on the Motion on June 27, 2006.

Paul Dennis Reid is scheduled to be executed on June 28, 2006 for the murders of Angela Holmes and Michelle Mace in 1997 in Clarksville, Tennessee. State v. Reid, 164 S.W.3d 286 (Tenn. 2005).

Through the Motion, Mr. Reid's sister, Linda Martiniano, seeks appointment as next friend of Mr. Reid in order to file a habeas corpus petition in this Court on his behalf. The direct appeals in state court of the Clarksville, Tennessee convictions and sentence have been completed. Mr. Reid has not filed a state post conviction petition or a federal habeas corpus petition and has declined to do so. If a petition were filed, Mr. Reid would be entitled to a stay of execution. See McFarland v. Scott, 512 U.S. 849, 114 S.Ct. 2568, 129 L.Ed.2d 666 (1994).

The Supreme Court has held that a "'next friend' may sue in place of a death-sentenced prisoner only when that person clearly shows that the prisoner is not competent." West v. Bell, 242 F.3d 338, 341 (6<sup>th</sup> Cir. 2001)(citing Whitmore v. Arkansas, 495 U.S. 149, 164-66, 110 S.Ct. 1717, 109 L.Ed.2d 135 (1990) and Rees v. Peyton, 384 U.S. 312, 314, 86 S.Ct. 1505, 16 L.Ed.2d 583 (1966)). The "burden is still on the putative 'next friend' to demonstrate, not simply assert,

the incompetence of the prisoner.” West, 242 F.3d at 341. The “Next Friend” must demonstrate, in the words of Rees, that the prisoner does not have the “capacity to appreciate his position and make a rational choice with respect to continuing or abandoning further litigation or ... suffer[s] from a mental disease, disorder, or defect which may substantially affect his capacity in the premises.” Rees, 384 U.S. at 314; West, 242 F.3d 341.

The procedure to follow in making these determinations was set forth by the Sixth Circuit Court of Appeals in a case decided three years ago also involving Mr. Reid, Kirkpatrick v. Bell, 64 Fed. Appx. 495, 2003 WL 21054667 (6<sup>th</sup> Cir. 2003). In Kirkpatrick, the Sixth Circuit explained that the criteria for the court to apply at the preliminary hearing on mental incompetence is to “determine whether there is any evidence that would raise a reasonable doubt about Reid’s competence and entitle him to a full evidentiary hearing on the issue.” 2003 WL 21054667 at \*\*1 (citing Harper v. Parker, 177 F.3d 567, 571 (6<sup>th</sup> Cir. 1999)). As the State in that proceeding had not had an opportunity to evaluate Mr. Reid and all the expert evidence pointed toward the incompetence of Mr. Reid, the Sixth Circuit granted a stay of the execution “until such time as the district court has had an opportunity to conduct a full evidentiary hearing, allowing the State to evaluate Reid and to present evidence concerning his competency.” Id.

At the hearing on the pending Motion, the Movant presented testimony of an expert, Dr. George W. Woods, Jr., and submitted other proof indicating that Mr. Reid does not have the capacity to appreciate his position and make a rational choice with respect to continuing or abandoning further litigation and that he suffers from a mental disease, disorder or defect which may substantially affect his capacity in the premises. The State called no witnesses and offered no countervailing proof, expert or otherwise.

Based on the evidence in the record, the Court found that there was sufficient evidence to raise a reasonable doubt about Mr. Reid's competence, and therefore, under the standard set forth by the Sixth Circuit in Kirkpatrick, the parties are entitled to a full evidentiary hearing on the issue.

Although the Court indicated that it was fully prepared to proceed with the full evidentiary hearing today, the State indicated that it would require an opportunity to evaluate Mr. Reid prior to the hearing, and that such an evaluation could not be completed prior to the scheduled execution. The State argued, however, that the Movant was not entitled to a stay given the late filing of the motion.

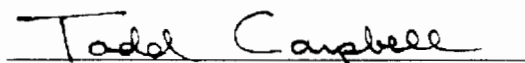
Given that the posture of this matter is now the same as that in Kirkpatrick, the Court must issue a stay of execution until such time as the parties have had an opportunity to hold a full evidentiary hearing on the issue of Mr. Reid's competency. The date of the hearing will be set by separate order.

The Motion for Stay of Execution is GRANTED and the execution is stayed pending a full evidentiary hearing on Reid's competency and pending further order of the Court.

The Motion for Appointment of Counsel is GRANTED and counsel will be appointed by separate order.

The Clerk is directed to transmit a copy of this Order to the Court of Appeals for the Sixth Circuit immediately.

IT IS SO ORDERED.

  
TODD J. CAMPBELL  
UNITED STATES DISTRICT JUDGE

## ATTACHMENT 2

No. 06-5860

DEATH PENALTY CASE  
Execution Scheduled: June 28, 2006

IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

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LINDA MARTINIANO  
Next Friend for Paul Reid  
Petitioner-Appellee

v.

RICKY BELL  
Respondent-Appellant

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

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MOTION TO EXPEDITE DISPOSITION OF THE  
MOTION TO VACATE STAY  
OF EXECUTION OF DEATH SENTENCE

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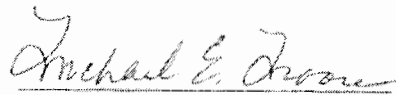
On June 27, 2006, the United States District Court for the Middle District of Tennessee entered a stay of the June 28th execution of Paul Dennis Reid, Jr., set by order of the Tennessee Supreme Court entered September 26, 2005. The district court, acting under the authority of this Court in *Kirkpatrick v. Bell*, No. 03-5526, 64 Fed. Appx. 495 (6th Cir. May 5, 2003), stayed Reid's execution approximately 12 hours before the scheduled time of 1:00 a.m. The State expeditiously moved this Court for an

order vacating the stay, and the appellee promptly filed a response in opposition. However, in the late evening hours of June 27, 2006, counsel for the State was advised that the panel would not issue a ruling prior to 1:00 a.m. on June 28, 2006.

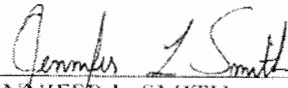
The State is now approximately 10 hours into a 24-hour execution order. Therefore, the Warden has directed all personnel involved in the execution process to stand ready to carry out the September 2005 order of the Tennessee Supreme Court beginning at 12:00 p.m. CDT. The State thus respectfully requests that the Court expedite disposition of the current motion to vacate.

Respectfully submitted,

PAUL G. SUMMERS  
Attorney General & Reporter



MICHAEL E. MOORE  
Solicitor General



JENNIFER L. SMITH  
Associate Deputy Attorney General  
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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing was served by first class mail, postage prepaid, and by email, to Henry Martin, Office of the Federal Public Defender, 810 Broadway, Suite 200, Nashville, Tennessee, 37203, on this, the 28th day of June, 2006.

  
\_\_\_\_\_  
JENNIFER L. SMITH  
Associate Deputy Attorney General

# ATTACHMENT 3



IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE

**STATE OF TENNESSEE V. PAUL DENNIS REID, JR.**

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No. M2001-02753-SC-DDT-DD - Filed September 26, 2005

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**ORDER**

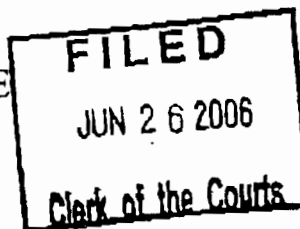
On May 24, 2005, this Court affirmed the two convictions of first degree murder and two sentences of death Paul Dennis Reid received for murders he committed in Montgomery County. Pursuant to Tennessee Code Annotated section 40-30-120(a) (2003), this Court set an execution date of October 5, 2005. Reid has now filed a motion, by and through counsel, requesting a stay of his execution. The State of Tennessee has filed a response in opposition to the request.

Upon consideration of the motion and the State's response thereto, the motion requesting a stay of the October 5, 2005, execution is GRANTED. However, Reid's execution is reset for June 28, 2006. Costs of this motion are assessed to the State of Tennessee.

PER CURIAM

# ATTACHMENT 4

IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE



**STATE OF TENNESSEE v. PAUL DENNIS REID, JR.**

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**No. M2001-02753-SC-DDT-DD**

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**AND**

**PAUL DENNIS REID, JR., by and through LINDA MARTINIANO v.  
STATE OF TENNESSEE**

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**No. M2006-01294-SC-28S-PD**

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**ORDER**

On May 24, 2005, this Court affirmed the two convictions of first degree murder and two sentences of death Paul Dennis Reid, Jr., received for murders he committed in Montgomery County. State v. Reid, 164 S.W.3d 286 (Tenn. 2005). Pursuant to Tennessee Code Annotated section 40-30-120(a) (2003), this Court set an execution date of October 5, 2005. By order filed September 26, 2005, this Court reset the execution for June 28, 2006.

On May 4, 2006, this Court issued an opinion in Daryl Keith Holton v. State and Paul Dennis Reid, Jr. v. State, Nos. M2005-01870-SC-S10-PD, M2005-02398-SC-PD, \_\_\_ S.W.3d \_\_\_, 2003 WL 24314330 (Tenn. May 4, 2006), holding that the trial court lacked authority to consider a petition for post-conviction relief filed by the Post-Conviction Defender on behalf of Reid where the petition was not signed or verified by Reid and where the Defender failed to establish a "next friend" basis upon which to proceed. By order filed June 22, 2006, this Court denied Reid's petition to rehear the opinion.

On May 23, 2006, the Post-Conviction Defender filed a motion for stay of execution and appointment of counsel in connection with a "next friend" petition for post-conviction relief filed on behalf of Reid by his sister, Linda Martiniano, Assistant Post-Conviction Defender Kelly Gleason, and Connie Westfall, an investigator with the Defender's office. On June 13, 2006, the

Montgomery County Circuit Court dismissed the petition and denied the motion for stay of execution and appointment of counsel, finding that the petition and accompanying affidavits failed to make a threshold showing of incompetence under Holton v. State and Reid v. State. A notice of appeal from the trial court's ruling was filed on June 20, 2006. The following day, the trial court denied a subsequent motion filed by the Defender on Reid's behalf, requesting the court to stay the execution pending the appeal of right from the dismissal of the post-conviction petition.

On June 22, 2006, Linda Martiniano, as putative next friend for Reid, filed a motion requesting this Court to stay the execution and requesting an expedited hearing on the matter. The motion asserts that the appeal from the dismissal of the post-conviction petition involves issues of first impression and that a stay of execution is necessary to ensure sufficient time for adequate and reflective briefing. The State of Tennessee has filed a response in opposition to the motion for stay of execution.

Concurrent with the filing of this motion, Martiniano filed in the Court of Criminal Appeals a motion for stay of execution pending the outcome of the appeal in that court from the dismissal of the post-conviction petition. On June 23, 2006, the Court of Criminal Appeals denied the motion for stay of execution. The court concluded that, because the appeal before it is not from the denial of a petition deemed to have been properly filed under the Post-Conviction Procedure Act, the court is without authority to grant a stay of the execution date set by this Court.

Martiniano then filed in this Court a Motion for Review of the Court of Criminal Appeals' denial of stay of execution. The Motion for Review argues that the statute and rules in place for post-conviction petitioners should also apply to petitions filed by a next friend, and that under those rules, the trial court and Court of Criminal Appeals have the authority to issue a stay of execution upon the filing of a post-conviction petition. Martiniano also filed a "Motion to Supplement the Motion for Stay of Execution with an Appendix of Attachments to the Court of Criminal Appeals Stay Motion, which was Attached in Whole as Appendix to Motion for Stay."

The State argues that, because the trial court dismissed the post-conviction petition for failure to satisfy the requirements for next friend status, there is no post-conviction petition pending and, therefore, Martiniano does not have standing to seek a stay of execution. The State next contends that the delay in seeking review of the trial court's order justifies denial of the request for a stay of execution.<sup>1</sup> Finally, the State asserts that the trial court's action in this case is consistent with decisions of this Court and does not justify a stay of execution.

Because an appeal from the dismissal of the post-conviction petition is pending, we decline to conclude that Martiniano lacks standing to seek a stay of execution. While we agree with the

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<sup>1</sup> Despite the imminence of the June 28, 2006, execution date, Martiniano and the Post-Conviction Defender did not file the "next friend" post-conviction petition until nineteen days after this Court's decision in Holton and Reid. After dismissal of the petition, a week passed before a notice of appeal was filed.

State that unnecessary delay has occurred in pursuing this matter, we nevertheless decline to conclude that such delay, standing alone, justifies denial of the request for a stay of execution. Cf. Tenn. Code Ann. 40-30-120(f) (stating that the “court may consider the last-minute nature of an application to stay execution by resolving against the petitioner any doubts and uncertainties as to the sufficiency of the petitioner’s submission”). Recognizing that an appeal in this matter is currently pending in the Court of Criminal Appeals, we note in relation to the merits of the issues raised that we have released today an opinion in Paul Dennis Reid, Jr. v. State, No. M2005-00260-SC-S09-PC (Tenn. June 26, 2006), holding that the standard for mental incompetence adopted in State v. Nix, 40 S.W.3d 459 (Tenn. 2001), applies to a competency determination during post-conviction proceedings. We conclude in this case that Martiniano has an insufficient likelihood of success on the merits of the post-conviction appeal to warrant a stay of execution.

In conclusion, the motion to supplement is GRANTED, the motion for review is GRANTED, and the motion to stay the execution is DENIED.

IT IS SO ORDERED.

PER CURIAM

Justice Adolpho A. Birch Jr. – Concurring in Part/Dissenting in Part

# ATTACHMENT 5

Westlaw.

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**H****Briefs and Other Related Documents**

This case was not selected for publication in the Federal Reporter.

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

Sixth Circuit Rule 28(g) limits citation to specific situations. Please see Rule 28(g) before citing in a proceeding in a court in the Sixth Circuit. If cited, a copy must be served on other parties and the Court.

Please use FIND to look at the applicable circuit court rule before citing this opinion. Sixth Circuit Rule 28(g). (FIND CTA6 Rule 28.)

United States Court of Appeals,  
Sixth Circuit.

Janet **KIRKPATRICK**, Next Friend for Paul  
Dennis Reid, Petitioner-Appellant,

v.

Ricky **BELL**, Warden, Respondent-Appellee.  
**No. 03-5526.**

May 5, 2003.

Sister of state prisoner under sentence of death filed request for stay of execution. The United States District Court for the Middle District of Tennessee denied stay, and sister appealed. The Court of Appeals, Siler, Circuit Judge, held that district court abused its discretion in finding no reasonable cause for full evidentiary hearing on question of prisoner's competency.

Stay granted; matter remanded.

West Headnotes

**Sentencing and Punishment** 1798

350Hk1798 Most Cited Cases

District court abused its discretion in finding no reasonable cause for full evidentiary hearing on question of state death row prisoner's competency to waive further appeals on request by prisoner's sister for stay of execution, where prisoner's sister presented un rebutted evidence of experts that prisoner was incompetent to waive his rights to appeal.

**\*495** On Appeal from the United States District Court for the Middle District of Tennessee.

Before SILER, BATCHELDER and CLAY,  
Circuit Judges.

SILER, Circuit Judge.

This matter came before this court on the eve of execution of Paul Dennis Reid, who has been sentenced to death for murder in the State of Tennessee. The execution date was set for April 29, 2003, and this petition was filed in our court on April 28, 2003. For reasons stated herein, this court will grant a stay of the execution in order for the district court to conduct a full evidentiary hearing on the issue of Reid's competency to waive further appeals.

Reid has filed papers in court and has testified before the district court that he wishes to waive any further proceedings to contest his conviction. His sister, Janet Kirkpatrick, has requested to intervene as **\*496** his next friend, in order to pursue his further appeals.

The Supreme Court of Tennessee declined to stay Reid's execution last week. *See State v. Reid*, No. M1999-00803-SC-DOT-DD (April 22, 2003). The Tennessee Supreme Court noted that Reid had previously been found competent to stand trial, after lengthy hearings, in two other capital cases, as recently as May 2000. The court concluded that

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there were no new factual assertions that called into doubt Reid's present capacity to make a rational choice to waive further appeals.

Subsequent to that decision, Reid was evaluated by Dr. Keith Caruso, a psychiatrist; Dr. Xavier Amador, a clinical psychologist; and Dr. James Kyne, a clinical psychologist, each finding that he is incompetent to waive his rights to appeal. At the hearing before the district court, Dr. Amador and several lay persons testified. The State was given the opportunity to evaluate Reid on short notice, but declined to present any expert testimony.

The criteria for the court at the preliminary hearing is to determine whether there is any evidence that would raise a reasonable doubt about Reid's competence and entitle him to a full evidentiary hearing on the issue. *Harper v. Parker*, 177 F.3d 567, 571 (6th Cir.1999). Admittedly, the district court had only a brief time to conduct such a hearing, and did the best it could under the circumstances. However, all of the expert evidence it heard pointed toward the incompetence of Reid. Nevertheless, based upon the conduct and testimony by Reid in the courtroom and upon "the entire record," the court decided that Reid was competent to waive his right to further appeals. The question of "reasonable cause" is reviewed for abuse of discretion. *Id.* Under the evidence presented in this case, the district court abused its discretion in finding no reasonable cause for a full evidentiary hearing on the question of competency. The burden was upon the petitioner, Kirkpatrick, to demonstrate reasonable cause and she presented un rebutted evidence of experts on the lack of competency by Reid to effect a waiver of further proceedings.

Therefore, we grant the stay of execution until such time as the district court has had an opportunity to conduct a full evidentiary hearing, allowing the State to evaluate Reid and to present evidence concerning his competency. In the event the court finds Reid to be incompetent, then it should allow Janet Kirkpatrick or some other suitable person to proceed as his next friend. If he is found competent to waive his further appeals, then the next friend should not be appointed.

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**REMANDED.**

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**Briefs and Other Related Documents (Back to top)**

- 03-5526 (Docket) (Apr. 28, 2003)

END OF DOCUMENT



# ATTACHMENT 6

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

JANET KIRKPATRICK )  
Next Friend for Paul D. Reid )  
v. ) NO. 3:03-0365  
RICKY BELL, Warden ) JUDGE CAMPBELL  
DEATH PENALTY

ORDER

Pending before the Court is a Motion for Stay of Execution and the Appointment of Counsel by Next Friend on Behalf of Paul Reid (“Motion”). The Court held a hearing on the Motion on April 28, 2003. For the reasons described herein, the Motion for “Next Friend” status by Janet Kirkpatrick is DENIED; the Motion for Stay of Execution is DENIED; and the Motion for Appointment of Counsel is DENIED.

Paul Dennis Reid (“Reid”) is scheduled to be executed on April 29, 2003, at 1:00 a.m. for the murders of Sarah Jackson and Steve Hampton in 1997 at a Captain D’s restaurant in the Donelson area of Nashville, Tennessee. State v. Reid, 91 S.W.3d 247 (Tenn. 2002). The execution is less than 13 hours away.

I. Procedural History in Federal Court

On Tuesday, April 22, 2003, the Tennessee Supreme Court denied a Motion to Stay Reid’s execution that was filed by Reid’s state attorneys over his objection.

Late Friday, April 25, 2003, Reid’s sister, Janet Kirkpatrick (“Kirkpatrick”) filed the pending Motion for Stay of Execution and the Appointment of Counsel by Next Friend on Behalf of Paul Reid. About an hour later, the Court held a hearing to decide the procedure to be

THIS document was entered on  
the docket in compliance with  
Rule 58 and/or Rule 79 (a),  
FRCP. on 4/28/03 By af

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followed in deciding the Motion. The Respondent, Ricky Bell, (“State”) asked the Court to have until Monday, April 28, 2003, to file a response to the Motion. At the conclusion of the hearing, the Court ordered as follows:

For the reasons stated from the bench, the following procedures and deadlines shall be followed regarding the pending Motion:

1. Respondent shall have 24 hours – until 5:00 p.m., Saturday, April 26, 2003 – to file an initial written response to the pending Motion;
2. Any mental evaluation of Paul Dennis Reid by Respondent shall take place before 5:00 p.m., Sunday, April 27, 2003;
3. The parties shall file any supplemental pleadings or documents by 5:00 p.m., Sunday, April 27, 2003;
4. The Court will hold a hearing on Monday, April 28, 2003, at 8:00 a.m. Paul Dennis Reid shall be present at the hearing. By contemporaneous Order, the Respondent is ordered to produce Mr. Reid for the hearing;
5. The pending Motion will be decided on the record unless a party files by 5:00, Sunday, April 27, 2003, a written request to present live testimony. In the event live testimony is permitted, the parties shall expect time limitations;
6. Nothing herein shall prevent any party from making an emergency request to the Court prior to the hearing.

On Saturday, April 26, 2003, the State filed a Response in Opposition to the Motion. On Sunday, April 27, 2003, Kirkpatrick filed a Reply to the State’s Response. Kirkpatrick also filed the following documents: Notice of Intent to Use Exhibits at Hearing; Supplemental Notice of Intent to Use Exhibits at Hearing; and Notice of Intent to Present Live Testimony and Exhibits.

The State, despite being given the specific opportunity by the Court to have Reid evaluated on Sunday, April 27, 2003, took no steps to do so.

The Court held a 3-1/2 hour hearing on the merits of the Motion on Monday, April 28, 2003, commencing at 8:00 a.m.

## II. "Next Friend" Status

It is undisputed that prior to the hearing Reid both publicly and privately disclaimed and denounced any efforts to stay his execution. Reid has refused a direct appeal to the Supreme Court, a State post-conviction petition and a Federal habeas corpus petition. 28 U.S.C. § 2254.

The case of West v. Bell, 242 F.3d 338 (6<sup>th</sup> Cir. 2001), which originated in this Court, provides helpful context. Federal courts are courts of limited jurisdiction. There is no proceeding before this Court filed by Reid that would permit the entering of a stay of execution. Id. at 340. Reid must invoke the Court's jurisdiction and not simply fail to waive it. There is no "jurisdictional basis" for this Court "to assume control of the state's processes," unless Reid is incompetent. Id. at 343. In the absence of an adequate finding of incompetence, Reid is considered a "responsible human being entitled to enter or stay out of federal court." Id. An "infinite desire to thwart the just processes of the law is not the only sign of mental competence. We must not assume that it is impossible for even a death-sentenced prisoner to recognize the justice of his sentence and to acquiesce in it." Id. This Court is "without the jurisdictional prerequisites necessary" to issue a stay, unless Reid is incompetent. Id.

"Supreme Court case law tells us that a 'next friend' may sue in place of a death-sentenced prisoner only when that person clearly shows that the prisoner is not competent." West, 242 F.3d at 341, citing Whitmore v. Arkansas, 495 U.S. 149, 164-66, 110 S.Ct. 1717, 109 L.Ed.2d 135 (1990) and Rees v. Peyton, 384 U.S. 312, 314, 86 S.Ct. 1505, 16 L.Ed.2d 583 (1966). The "burden is still on the putative 'next friend' to demonstrate, not simply assert, the

incompetence of the prisoner.” West, 242 F.3d at 341. The “Next Friend” must demonstrate, in the words of Rees, that the prisoner does not have “capacity to appreciate his position and make a rational choice with respect to continuing or abandoning further litigation or ... suffer[s] from a mental disease, disorder, or defect which may substantially affect his capacity in the premises.” Rees, 384 U.S. at 314; West, 242 F.3d 341.

The bottom line is this Court does not have jurisdiction to stay the execution of Reid unless Kirkpatrick proves that Reid suffers from a mental disease or defect which: (1) prevents Reid from understanding his legal position and the options available; or (2) prevents him from making a rational choice between his options. Whitmore, 495 U.S. at 166; Rees, 384 U.S. at 314.

### III. Kirkpatrick’s Motion

Kirkpatrick initially argues that as Reid’s sister she is dedicated to his interests and, thus, is an appropriate “Next Friend.” This is uncontested by the State.

Kirkpatrick next argues that Reid is mentally ill and that the mental illness prevents him from making a rational choice between his options of being executed in a few hours and continuing his appeals and living.

Kirkpatrick relies primarily on the reports of three mental health experts who evaluated Reid late last week after the Tennessee Supreme Court declined to issue a stay of execution. The three experts are: Keith Caruso, M.D., Xavier Amador, Ph.D., and James Kyne, Ph.D. Time constraints do not permit a lengthy discussion of those experts’ opinions. But, in summary, the experts opine that Reid is incompetent to waive his appeals due to severe mental disease.

Kirkpatrick also relies, in part, on the opinion of Pamela Auble, Ph.D.; a judicial adjudication of incompetence in 1978; and a 92 page letter written by Reid to state authorities in April, 2003.

#### IV. State's Response

The State contends that a sufficient showing has not been made to warrant conferral of "Next Friend" status on Reid's behalf.

The State relies, in part, on Reid's various letters to State authorities foregoing his appeals; two State Courts having previously found Reid competent in related cases involving murders at McDonalds and Baskin Robbins; and the Tennessee Supreme Court's recent rejection of a stay of execution.

The State stresses that on April 22, 2003, the Tennessee Supreme Court declined to stay Reid's execution. State v. Reid, No. M1999-00803-SC-DOT-DD (Tenn., April 22, 2003). The Tennessee Supreme Court noted that Reid has been twice found competent to stand trial, after lengthy hearings, in two other capital cases as recently as May, 2000. The Tennessee Supreme Court found that Reid has clearly indicated that he has no desire to pursue any post-conviction remedies. Finally, the Tennessee Supreme Court concluded that Reid is a "responsible person" and that no "truly new factual assertions that call into doubt Mr. Reid's present capacity to understand his legal position and options or to make a rational choice among these options" had been presented. Pursuant to Franklin v. Francis, 144 F.3d 429 (6<sup>th</sup> Cir. 1998), the State argues that this Court must defer to the Tennessee Supreme Court's decision that Reid is competent to waive his post-conviction rights and be executed.

The State further argues that the Tennessee Supreme Court properly followed the Rees standard when it concluded that nothing had been presented to call Reid's present competency into question. This determination, according to the State, is neither contrary to, nor involved an unreasonable application of, clearly established Federal law. Therefore, the State contends, this Court is bound by the decision of the Tennessee Supreme Court. 28 U.S.C. § 2254(d).

Alternatively, the State argues that Kirkpatrick has not carried her burden of proof to achieve "Next Friend" status. Urgent time constraints do not permit further elaboration on the State's position.

#### V. Hearing

The Court held an evidentiary hearing over the objection of the State. The hearing was held pursuant to the inherent powers of the Court for the reasons stated from the bench.

Reid testified at length in response to questions by the Court and counsel. Also testifying on behalf of Kirkpatrick were Dr. Xavier Amador, Robert Kirkpatrick, the brother-in-law of Reid, and Michael Engle, one of Reid's State attorneys.

The Court finds based on the bearing, demeanor and deportment of Reid, and the entire record, that Reid has knowingly, intelligently, voluntarily, and rationally decided to be executed rather than pursue further appeals and post-conviction options.

The Court finds Reid has a mental illness. Reid, for instance, believes the military causes ringing in his ears for its own purposes. Reid has other unfounded fantasies about military surveillance and other conspiracies. The controlling question, however, is whether Reid's mental problems prevent him from choosing to be executed or pursuing his appeals and living.

Reid is aware he will be executed within hours. Reid knows why he is to be executed. Reid understands execution is final and irreversible. Reid knows that he has the option of staying his execution by simply pursuing appeals. Reid's mental illness is not the proximate cause of Reid's decision to choose execution.

The Court finds that Reid has the present capacity to understand his legal position and options and to make a rational choice among these options and has done so.

The Court further finds that the April 22, 2003, decision of the Tennessee Supreme Court was neither contrary to, nor involved an unreasonable application of, already established Federal law based on the record before the Tennessee Supreme Court at that time. Considering the new facts developed since April 22, 2003, the decision of the Tennessee Supreme Court remains correct.

The parties dispute whether this Court is bound by the decision of the Tennessee Supreme Court. The State relies on Franklin v. Francis, 144 F.3d 429 (6<sup>th</sup> Cir. 1998). Kirkpatrick argues 28 U.S.C. §§ 2254(d) and (e) do not apply to a "Next Friend" petition since it is not a claim for relief. Kirkpatrick, alternatively, argues that Franklin is not procedurally or factually on point with this case. The Court need not resolve this dispute since Kirkpatrick has failed to carry her burden even if the Court is not bound by the decision of the Tennessee Supreme Court.

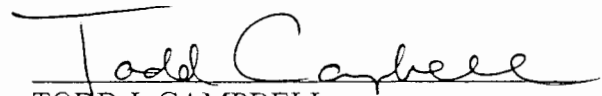
#### VI. Conclusion

For the reasons described above, the Motion for "Next Friend" status by Janet Kirkpatrick is DENIED; the Motion for Stay of Execution is DENIED; and the Motion for Appointment of Counsel is DENIED.



The Clerk is directed to transmit a copy of this Order to the Court of Appeals for the Sixth Circuit immediately.

IT IS SO ORDERED.

A handwritten signature in black ink that reads "Todd Campbell". The signature is written in a cursive style with a long horizontal line extending from the top of the "T".

TODD J. CAMPBELL  
UNITED STATES DISTRICT JUDGE