

IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE

STATE OF TENNESSEE V. SEDLEY ALLEY

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No. M1991-00019-SC-DPE-DD - Filed January 6, 2005

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**ORDER**

On January 16, 2004, upon the completion of Sedley Alley's three-tiered appellate review and on motion of the State, this Court entered an order setting June 3, 2004, as the date for Alley's execution. On May 19, 2004, the United States District Court for the Western District of Tennessee issued an order staying the execution. On December 14, 2004, relying on the decision in In re Abdur'Rahman, Nos. 02-6547/6548 (6<sup>th</sup> Cir. December 13, 2004)(en banc), a panel of the United States Court of Appeals for the Sixth Circuit vacated the entry of the stay of execution and remanded the case to the District Court for further proceedings.

On December 14, 2004, the State filed a Motion to Reset Date of Execution pursuant to Supreme Court Rule 12.4(E). The State requested that the date be set no more than twenty-one days from the date of the order setting the execution date. On December 23, 2004, Sedley Alley filed a Response to the State's Motion in which he asserted that the Motion was premature and that resetting an execution date was impermissible for several reasons: (1) the stay entered by the district court remains in full effect until mandate issues from the Sixth Circuit Court of Appeals; (2) the State is judicially estopped from seeking an execution date; and (3) a petition for writ of certiorari in another case, involving the trial court's refusal of DNA analysis of certain evidence in Alley's capital case, has been filed in the United States Supreme Court. On December 30, 2004, the State filed a Reply to Sedley Alley's Response.

Having considered the Motion to Reset Date of Execution, the Response, the State's Reply to the Response, and the authorities cited by the parties, the Court concludes that a date for execution should not be set at the present time. Alley alleges that he intends to file a petition for rehearing en banc in the Sixth Circuit Court of Appeals. Furthermore, the State of Tennessee has announced its intention to file a petition for writ of certiorari in the United States Supreme Court from the decision of the Sixth Circuit in In re Abdur'Rahman, supra. In light of the ongoing federal litigation, the unsettled federal law on the issue involved in this litigation, and the potential for further rulings by the federal courts that could render ineffectual any date set, this Court concludes that the interests of judicial economy and finality militate against setting an execution date at this time. It is therefore ordered that the State's Motion to Reset Date of Execution is DENIED.

PER CURIAM

