IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

STATE OF TENNESSEE,	)	
	)	
	)	**HAMILTON COUNTY**
v.	)	**No. E1997-00344-SC-DDT-DD**
	)	
LEE HALL, aka LEROY HALL, JR.,	)	**Capital Case**
	)	**Execution Date: Dec. 5, 2019**
	)	
Defendant.	)	

RESPONSE OF THE STATE OF TENNESSEE IN OPPOSITION TO THE MOTION FOR STAY OF EXECUTION

Twenty-eight years ago, Lee Hall aka Leroy Hall, Jr. ("Hall") doused his estranged girlfriend, Traci Crozier, in gasoline and set her on fire. She suffered third-degree burns over more than 90 percent of her body, and she was conscious for several hours of "unimaginable" pain and suffering before succumbing to her injuries. *State v. Hall*, 958 S.W.2d 679, 700 (Tenn. 1997). Hall was sentenced to death for this crime, and Ms. Crozier's family has waited nearly three decades for justice.

Now, just one week before his execution, Hall asks this Court to delay justice further. He claims a stay is necessary so he can litigate a juror-bias claim that he only began investigating in September of this year. This Court should not tolerate this sort of delay tactic. Moreover, Hall has established no likelihood of success on the merits of this last-minute claim. The motion for a stay should be denied.

I. Procedural Background.

On the strength of the proof against him, a Hamilton County jury convicted Hall of premeditated first-degree murder and aggravated arson. *Id.* at 682. The jury sentenced Hall to death, finding that the aggravating circumstances outweighed the mitigating circumstances beyond a reasonable doubt. *Id.*

After this Court affirmed Hall's convictions and sentence on direct appeal, *id.* at 683, Hall unsuccessfully sought post-conviction relief in state court, *Hall v. State*, No. E2004-01635-CCA-R3-PD, 2005 WL 2008176, at *1 (Tenn. Crim. App. Aug. 22, 2005), *perm. app. denied* (Tenn. Dec. 19, 2005). Hall then filed a petition for a writ of habeas corpus in federal court, but the District Court granted the State's motion for summary judgment and dismissed the petition. *Hall v. Bell*, No. 2:06-cv-00056, 2010 WL 908933, at *1 (E.D. Tenn. Mar. 11, 2010). While Hall's subsequent motion to alter or amend this order was pending, Hall withdrew his petition and sought no further review. *Hall v. Bell*, No. 2:06-cv-00056 (E.D. Tenn. Sept. 22, 2011) (memorandum and order dismissing petition).

Hall participated in challenges to the State's lethal injection protocol, *Abdur'Rahman v. Parker*, 558 S.W.3d 606 (Tenn. 2018); *West v. Schofield*, 519 S.W.3d 550 (Tenn. 2017), but otherwise he did not attack his convictions or sentence in the ensuing years. On November 16, 2018, this Court ordered that Hall's sentence of death be carried out on December 5, 2019. *State of Tennessee v. Lee Hall, a/k/a Leroy Hall, Jr.*, No. E1997-00344-SC-DDT-DD (Tenn. Nov. 16, 2018) (order setting execution date).

Eleven months later, on October 17, 2019, Hall submitted three filings—a motion to reopen post-conviction proceedings, a second post-conviction petition, and a petition for writ of error *coram nobis*—in the Hamilton County Criminal Court, all addressing allegedly new evidence of a biased juror. (App'x A, at 1-2.) On November 6, 2019, the court dismissed the *coram nobis* petition because it was not a proper vehicle for litigating constitutional claims, and it dismissed the motion to reopen because Hall had failed to allege a statutory basis for reopening. (App'x A, at 2, 6-9.) However, the court ordered additional briefing on whether due process permitted Hall to file a second post-conviction petition. (App'x A, at 2, 10-12.) The court also set a November 14, 2019 hearing for presentation of testimony, which the court would consider as an offer of proof if it deemed the second petition procedurally barred. (App'x A, at 2, 12-13.)

Hall immediately appealed from the denial of his *coram nobis* petition, and he also immediately filed an application for permission to appeal from the denial of his motion to reopen. *Lee Hall v. State of Tennessee*, No. E2019-01978-CCA-R3-ECN (Tenn. Crim. App.); *Lee Hall v. State of Tennessee*, No. E2019-01977-CCA-R28-PD (Tenn. Crim. App.). The Court of Criminal Appeals dismissed Hall's application for permission to appeal because it was procedurally deficient. *Lee Hall v. State of Tennessee*, No. E2019-01977-CCA-R28-PD (Tenn. Crim. App. Nov. 8, 2019) (order dismissing application). Hall's *coram nobis* appeal is still pending, and he did not file a motion to expedite the appeal.

At the hearing on the second petition, the allegedly biased juror testified, as did three investigators who worked for the Office of the

Post-Conviction Defender ("OPCD"). (App'x B, at 5-13.) The court held that due process did not permit the filing of a second petition, and it concluded alternatively that Hall's biased-juror claim failed on the merits. (App'x B, at 17-28.)

Hall did *not* immediately appeal from denial of his second petition. Instead, he waited nearly one week and filed a motion to reconsider, which requested that the trial court grant him relief and consider a declaration from a psychologist who speculated about how the juror's trauma may have affected her. The next day, the court denied the motion to reconsider. (App'x C.) Hall finally filed a notice of appeal on November 26, 2019. *Lee Hall v. State of Tennessee*, No. E2019-02094-CCA-R3-PD (Tenn. Crim. App.).

Now, six weeks after first submitting these filings, three weeks after the trial court's first order, over one week after its second order, and just one week before his scheduled execution date, Hall has requested this Court stay his execution.

II. Hall's Execution Should Not Be Stayed for Litigation of a Last-Minute, Meritless Claim.

After nearly three decades, Ms. Crozier's family has yet to see justice done. Hall contends that they must wait further still so he can litigate a claim of juror bias, which his attorneys only recently investigated. But this sort of delay tactic should not be rewarded by this Court. Moreover, Hall has not established a likelihood of success on the merits. His request for a stay should be denied.

A. This Court should deny Hall's last-minute request for a stay because he should have investigated and raised it years ago.

A jury convicted Hall of murder and sentenced him to death 27 years ago. His post-conviction proceedings concluded 15 years ago. This Court set his current execution date over one year ago. But Hall asks this Court to stay his execution for litigation of a claim he did not begin investigating until late September of this year when investigators with the OPCD approached a juror at her home. (Mot., at 2, 6.) This sort of delay tactic should not be permitted.

"Both the State and the victims of crime have an important interest in the timely enforcement of a sentence." *Hill v. McDonough*, 547 U.S. 573, 584 (2006). Given this significant interest, "[l]ast-minute stays should be the extreme exception, not the norm," and "the last-minute nature of an application that could have been brought earlier, or an applicant's attempt at manipulation, may be grounds for denial of a stay." *Bucklew v. Precythe*, 139 S. Ct. 1112, 1134 (2019) (internal quotation marks omitted). To that end, a condemned inmate may not wait until shortly before a scheduled execution date to begin litigation

of a claim. *See id.* (noting that the Court vacated a stay of execution where the inmate brought a claim 10 days before his execution date for a murder he had committed 24 years earlier (citing *Dunn v. Ray*, 139 S. Ct. 661 (2019)).

The claim in this case falls squarely in that prohibition on new, eleventh-hour litigation. Although Hall claims that his attorneys "made efforts to locate the juror during the original post-conviction time frame," (Mot., at 8), his investigators testified that they never attempted to contact the juror despite having her out-of-state address and a post office box in Chattanooga.[1] (App'x B, at 12-13; App'x D, at 63-70, 87-94, 121-25.) They chose not to contact her because she lived out-of-state and they preferred to show up unannounced at jurors' residences, rather than to discuss cases via telephone or other correspondence. (App'x B, at 11-12; App'x D, at 65-70, 88-99, 109-15, 122-32.) Additionally, Hall apparently put on no proof about whether investigators with the Federal Defender's office attempted to contact this juror while his federal habeas corpus petition was pending. (App'x B, at 10-13; App'x D, at 60, 104, 124.)

After choosing to forgo this investigation at the proper time, investigators with the OPCD sought out the juror years after the conclusion of Hall's state and federal collateral review proceedings, finally interviewing her in 2014. (App'x B, at 12-13; App'x D, at 140-41.) They did not establish below that they even *asked* her about this

[1] One of the investigators suggested they "probably" went to the juror's former Chattanooga address, although she was not sure if they had. (App'x D, at 90, 93.)

issue at that time. (App'x B, at 13; App'x D, at 34, 46, 140-48, 152-53.) In fact, the juror recalled that she may have brought up the prior abuse herself during the 2019 interview, which Hall's investigators did not initiate until 10 months after this Court set the current execution date. (App'x B, at 10; App'x D, at 42-43, 46.)

Further, Hall has not pursued this litigation diligently since he first filed his petitions in October. His *coram nobis* petition and motion to reopen were denied one month before his execution date. But he did not seek expedited review in the Court of Criminal Appeals.[2] To the contrary, he filed a woefully deficient application for permission to appeal and, after it was promptly denied *sua sponte* by the Court of Criminal Appeals, has still not actually refiled that appeal, although he says in his stay motion that he will now seek to rectify his error. (Mot., at 2 n.1.) And, after the trial court denied his second post-conviction petition, he waited nearly one week to file a meritless motion for reconsideration before finally appealing. Even then, he waited until the evening of Thanksgiving—one week before his execution date—to ask this Court for a stay.

This is precisely the sort of last-minute stay request that frustrates and subverts the important interest of Ms. Crozier's family and the people of Tennessee in having this lawful judgment carried out. This Court should deny Hall's request for a stay for this reason alone.

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[2] The Court of Criminal Appeals has expedited appellate review in similar circumstances. *See Sedley Alley v. State*, No. W2006-01179-CCA-R3-PD (Tenn. Crim. App. June 9, 2006) (granting capital petitioner's motion to expedite appeal filed 20 days before the execution date).

B. Hall has not established a likelihood of success on the merits.

Even if the Court entertains this late bid for delay, it should decline to stay Hall's execution. This Court will not stay an execution pending resolution of collateral litigation in state court "unless the prisoner can prove a likelihood of success on the merits of that [collateral] litigation." Tenn. Sup. Ct. R. 12(4)(E); *State v. Irick*, 556 S.W.3d 686, 689 (Tenn. 2018). "In order to establish a likelihood of success on the merits of a claim, a plaintiff must show more than a mere possibility of success." *Irick*, 556 S.W.3d at 689 (internal quotation marks omitted).

In this case, Hall has failed to establish a likelihood of success on the merits. The General Assembly has not approved any mechanism for Hall to raise such a last-minute juror-bias claim. Nor is there a constitutional basis for subverting the General Assembly's carefully ordered post-conviction procedure. Moreover, the testimony at the hearing established that the claim is meritless.

1. Due process does not require reopening post-conviction proceedings for a non-statutory reason.

Hall seeks to litigate this claim through either a motion to reopen or a second post-conviction petition. But the General Assembly has limited petitioners to one petition for post-conviction relief, Tenn. Code Ann. § 40-30-102(c), and it has permitted only a narrow, discrete set of claims to be raised after resolution of a petition: new, retroactive constitutional rights or rules; new scientific evidence of actual

innocence; or an invalid prior conviction that enhanced the inmate's sentence. Tenn. Code Ann. § 40-30-117(a).

Hall readily admits that his claim does not fit any of these categories. Instead, he invokes due process as a means of undoing the General Assembly's limitations on successive post-conviction litigation. To that end, he relies almost entirely on this Court's precedent tolling the statute of limitations. But Hall identifies no authority for the proposition that due process requires the reopening of post-conviction proceedings or permits a second post-conviction petition based on a non-statutory ground for reopening.

This lack of authority is not surprising. There are good reasons for treating the statute of limitations differently from the limited bases for reopening. When considering whether due process requires tolling the statute of limitations, this Court weighs the competing interests at stake. *See Whitehead v. State*, 402 S.W.3d 615, 623 (Tenn. 2013). A petitioner's interest in that context is his "*opportunity* to attack his conviction and incarceration on the grounds that he was deprived of a constitutional right during the conviction process." *Id.* (emphasis added) (quoting *Burford v. State*, 845 S.W.2d 204, 623 (Tenn. 1992)). This interest may overcome the State's legitimate interest in preventing litigation of stale and groundless claims and in avoiding the cost of continuous, generally fruitless litigation. *See id.*

In the context of a motion to reopen, on the other hand, a petitioner has had the opportunity to pursue such a collateral attack. Indeed, Hall took advantage of that opportunity 15 years ago when he was afforded a full post-conviction proceeding, during which he was

represented by counsel and had investigators working his case. *See Hall*, 2005 WL 2008176, at *1. Thus, the principal concern addressed by due process tolling—that a petitioner is unconstitutionally deprived of the *opportunity* to attack his conviction or sentence—is not implicated where, as here, a petitioner has collaterally attacked his conviction and sentence.

But the State's interest in finality is even stronger in this context than in the statute-of-limitations context. If due process required reopening a petition every time an inmate decided to pursue some new avenue of collateral attack, the one-petition rule would be wholly undone. The General Assembly's process for collateral review would unravel into a vehicle for near-constant litigation and delay.

Hall's case demonstrates this well. Hall chose not to investigate this juror-bias claim—he did not *attempt* to contact this juror—during his original post-conviction proceeding. He also made no showing that he investigated this claim during his federal habeas corpus proceeding or, for that matter, in the months after this Court set the current execution date. Were that not enough, Hall failed to establish that he asked about this issue when his investigators finally contacted the juror five years ago. Instead, Hall raised this claim for the first time nearly three decades following the crime, 15 years after the conclusion of state post-conviction proceedings, and mere weeks before a scheduled execution date.

Despite this, Hall claims due process requires he be afforded yet another opportunity to collaterally attack his convictions and sentence, and this Court must delay his execution presumably for years to

facilitate this renewed attack. This is just the sort of constant litigation the General Assembly designed the Post-Conviction Procedure Act to avoid. Due process does not require vitiating this design.

2. Hall's other theories for constitutionally mandated reopening are patently meritless.

Hall also raises other constitutional theories for subverting the General Assembly's intent.[3] Each is as meritless as his due process theory.

Hall claims that, because another capital post-conviction petitioner received relief when he *did* investigate and raise a timely juror-bias claim in his post-conviction proceedings,[4] equal protection requires that Hall be able to litigate his claim too. It does not. The one-petition rule and the limited bases for reopening apply broadly to all post-conviction petitioners, and Hall has been treated no differently from any other post-conviction petitioner. *See Phillips v. Ferguson*, 182 F.3d 769, 774 (10th Cir. 1999) (holding that Wyoming's collateral review statute of limitations did not violate equal protection because the "statute of limitations applies equally to all Wyoming defendants"). *Brown v. State*, 928 S.W.2d 453, 456 (Tenn. Crim. App. 1996) (rejecting

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[3] Hall briefly mentions the Open Courts Clause of the Tennessee Constitution. *See* Tenn. Const. art I, § 17. This clause does not limit the General Assembly's authority to limit successive post-conviction petitions. *See Dellinger v. State*, No. E2013-02094-CCA-R3-ECN, 2015 WL 4931576, at *15-16 (Tenn. Crim. App. Aug. 18, 2015) (rejecting a similar argument in a capital case), *perm. app. denied* (Tenn. May 6, 2016).

[4] *Faulkner v. State*, No. W2012-00612-CCA-R3-PD, 2014 WL 4267460, at *82 (Tenn. Crim. App. Aug. 29, 2014) (no perm. app. filed).

a petitioner's equal protection challenge to the post-conviction statute of limitations because the petitioner was treated no differently from any other petitioner). Both Hall and any successful petitioner were afforded a full post-conviction proceeding; Hall simply chose not to investigate this claim at that time.

Using the same strained logic, Hall claims that his execution would be "arbitrary" because it depends on when and where the juror disclosed her prior abuse. He presumably invokes the principle that capital punishment must not be imposed in an arbitrary or capricious manner. *See Gregg v. Georgia*, 428 U.S. 153, 188 (1976) (death penalty must "not be imposed under sentencing procedures that created a substantial risk that it would be inflicted in an arbitrary and capricious manner"). But he cites no authority that this Eighth Amendment principle applies to collateral review procedures. *Cf. State v. Keen*, 31 S.W.3d 196, 216 (Tenn. 2000) ("[S]o long as the system used to impose death is not rendered arbitrary or capricious in that the sentencing authority lacks adequate information or guidance, the procedural protections of the Eighth Amendment in capital cases have no application."). Nor is application of the one-petition rule or the limited bases for reopening arbitrary; they apply equally and broadly to all post-conviction petitioners.

3. Hall's error *coram nobis* claim is meritless.

Hall filed a *coram nobis* petition below, which the court appropriately denied. An inmate may seek a writ of error *coram nobis* when he discovers new evidence that would have been admissible at trial and may have resulted in a different judgment. Tenn. Code Ann. §

40-26-105(b). But error *coram nobis* is not a vehicle for litigating constitutional claims such as this one. *See Nunley v. State*, 552 S.W.3d 800, 819-20 (Tenn. 2018) (holding that *coram nobis* is not an appropriate proceeding to litigate a *Brady* claim). Instead, *coram nobis* relief is available only for newly discovered evidence that would have been admissible *at trial*. *Id.* at 816. This claim does not involve matters litigated at trial, and this evidence about the juror's past would not have been admissible.

4. Hall did not establish juror bias.

Even overlooking the General Assembly's manifest intent to preclude this sort of belated collateral attack, Hall nevertheless failed to establish his claim of juror bias below when given the opportunity. In Tennessee, a juror's "failure to disclose information in the face of a material question reasonably calculated to produce the answer or false disclosures give rise to a presumption of bias and partiality." *Smith v. State*, 357 S.W.3d 322, 348 (Tenn. 2011) (quoting *State v. Akins*, 867 S.W.2d 350, 355-56 (Tenn. Crim. App. 1993)). A question is "reasonably calculated" to produce an answer if "a reasonable, impartial person would have believed the question, as asked, called for juror response under the circumstances." *Akins*, 867 S.W.2d at 356 n.13. If a defendant establishes this presumption of bias, the State may rebut it with proof of the absence of actual favor or partiality. *Id.* at 357; *see also Carruthers v. State*, 145 S.W.3d 85, 95 (Tenn. Crim. App. 2003).

Hall has identified no question asked during jury selection that was reasonably calculated to call for the juror's disclosure of domestic

abuse she suffered at the hands of her first husband.[5] "The most relevant question," the court below observed, concerned whether any juror's exposure to domestic violence "would in any way *possibly affect or influence you to the point where it would maybe compromise you to be able to render a fair and impartial verdict*." (App'x B, at 26 (emphasis added).) As the court below found, the juror's silence after this question during voir dire was not untruthful; she *was* able to render a fair and impartial verdict. (App'x B, at 26-28.) Nor was a question about whether the juror was a victim of a "crime," which was included in the questionnaire, reasonably calculated to elicit a response on this point: the juror, a layperson, did not consider herself to be a victim of a crime regarding this uncharged abuse. (App'x D, at 22, 31-32, 37-39.)

Moreover, the court below found that the State rebutted any presumption of prejudice. (App'x B, at 25-28.) In his motion for a stay, Hall focuses on a declaration his attorneys had the juror sign before the hearing to establish evidence of actual bias. (Mot., at 12-15.) But this declaration was not admitted as evidence at the hearing. (App'x D, at 28-32.)[6] Instead, during her testimony, the juror rejected the suggestion

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[5] Hall complained as well that the juror did not report in the questionnaire that she had previously contacted police when her first husband was driving drunk, or that he was charged with that offense. (App'x D, at 14-16, 30-31.) However, "[i]nsignificant nondisclosures will not give rise to a presumption of prejudice." *See Akins*, 867 S.W.2d at 356 n.12.

[6] Hall suggests that the record in his *coram nobis* appeal has been sent to the Appellate Clerk for filing, although it is unclear if the transcript of the hearing is a part of that record. The State has attached a

that she was biased against Hall, and she appeared surprised that the word "bias" appeared in this declaration.[7] (App'x B, at 26; App'x D, at 24, 39-40.) She did not think of herself as biased because this abuse happened "way in the past," well before the time of the trial; her first husband died in 1975, which was 17 years before the trial. (App'x B, at 7; App'x D, at 20, 24, 39-41.) In fact, after she remarried in 1981, she "buried" her prior experiences and did not think about them. (App'x B, at 8; App'x D, at 20-23, 26, 44.) The court below accredited the juror's testimony at the hearing and properly rejected Hall's claim of bias. (App'x B, at 26-28.)

Thus, Hall failed to establish a presumption of bias below, and, regardless, the State established that the juror was not actually biased against him during the trial. Even setting aside Hall's failure to investigate and litigate this claim when given the opportunity, Hall has not established any likelihood of success on the merits.

* * *

The victims of crime, including Ms. Crozier's family, have a constitutional right to "a prompt and final conclusion of the case after the conviction or sentence." Tenn. Const. art I, § 35. This sort of delay-seeking litigation subverts their entitlement to finality. This Court should reject Hall's request for a stay.

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transcript of the hearing, which Hall attached to a second federal habeas corpus petition that he filed on December 2, 2019.

[7] Although she recalled a "fleeting" feeling of hatred toward Hall while he testified, this did not affect her ability to fairly consider the evidence. (App'x B, at 9, 26-28; App'x D, at 24-25, 39-42.)

CONCLUSION

Hall's motion to stay his execution should be denied.

Respectfully submitted,

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