IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

	)	
IN RE:	)	
	)	**SHELBY COUNTY**
SEDLEY ALLEY	)	**ORIGINAL APPEAL NO. 2**
	)	**M1991-00019-SC-DPE-DD**
	)	**Filed December 9, 2003**

MOTION TO SET EXECUTION DATE

Pursuant to Tenn.Sup.Ct.R. 12.4(A), the State of Tennessee respectfully requests that the Court set an execution date for Sedley Alley. In support of this motion, the State relies on the following:

1.   Alley was convicted and sentenced to death in 1987 for the kidnapping and brutal rape and murder of nineteen-year-old Suzanne Marie Collins. Alley's convictions and sentences were affirmed by the Tennessee Supreme Court on direct appeal. State v. Alley, 776 S.W.2d 506 (1989).

2.   Alley subsequently sought state post-conviction relief. After an evidentiary hearing, the trial court denied relief; on appeal, however, the Tennessee Court of Criminal Appeals remanded the matter to a different trial judge for further proceedings. Alley v. State, 882 S.W.2d 810 (Tenn.Crim.App. 1994). After remand and another evidentiary hearing before a different judge, petitioner again was denied relief, and the Tennessee Court of Criminal Appeals affirmed. Alley v. State, 958 S.W.2d 138 (Tenn. Crim. App.1997), permission to appeal denied.

3.   On July 1, 1998, petitioner filed a petition for federal habeas corpus relief. On November 4, 1999, the district court issued an order denying relief on all of petitioner's claims and denying petitioner a certificate of appealability. Alley v. Bell, 101 F.Supp.2d 588 (W.D.Tenn. 2000). The

United States Court of Appeals for the Sixth Circuit, having granted subsequently a certificate of appealability on five issues, affirmed the district court's denial of habeas relief. *Alley v. Bell*, 307 F.3d 380 (6th Cir. 2002). The United States Supreme Court denied a petition for writ of certiorari on October 6, 2003, *Alley v. Bell*, __ U.S. __, 124 S.Ct. 99 (Oct. 6, 2003) (No. 02-10839), and denied a petition for rehearing on December 8, 2003. (copy of excerpted order list attached)

5.   Although Alley has pending presently in the district court a post-judgment motion for relief from judgment,[1] he has completed the standard three-tier appeals process, making the setting of an execution date appropriate. See Rule 12.4(A).

        For the reasons stated, a new execution date should be set.

                                          Respectfully submitted,

                                          _____
                                          PAUL G. SUMMERS
                                          Attorney General and Reporter

                                          _____

_____

[1]On October 10, 2003, four days after the Supreme Court denied certiorari review, Alley filed a Motion for Relief from Judgment pursuant to Fed.R.Civ.P. 60(b) in the United States District Court for the Western District of Tennessee. Such a motion is not part of the standard three-tier review process. Furthermore, Rule 60(b) motions filed in habeas cases are treated as second or successive petitions and must be forwarded to the United States Court of Appeals for the Sixth Circuit to conduct a gatekeeping review to determine whether they meet the limited criteria for bringing a second or successive petition. 28 U.S.C. § 2244(b); *McQueen v. Scroggy*, 99 F.3d 1302, 1335 (6th Cir. 1996). On November 3, 2003, the district court ordered Alley's motion held in abeyance pending a decision on this "second or successive petition issue" in *Abdur'Rahman v. Bell*, Nos. 02-6547, 6548 (6th Cir.) (en banc oral argument held Dec. 3, 2003).

MICHAEL E. MOORE
Solicitor General

_____
JOSEPH F. WHALEN
Assistant Attorney General
Attorney of Record
425 Fifth Avenue North
Nashville, Tennessee 37202
(615) 532-7357
(615) 532-7791[2]
B.P.R. No. 19919

---

[2]Pursuant to Tenn.Sup.Ct.R. 12.4(B), the attorney of record prefers to be notified of any orders or opinions of the Court by facsimile.

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been forwarded, by facsimile and by first-class mail, postage prepaid, to Robert L. Hutton, Glankler Brown, PLLC, 100 Commerce Square, Suite 1700, Memphis, Tennessee, 38103, and Paul R. Bottei, Office of the Federal Public Defender, 810 Broadway, Suite 200, Nashville, TN 37202, on this the _____ day of December, 2003.

_____
JOSEPH F. WHALEN
Assistant Attorney General