

IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE

**STATE OF TENNESSEE V. PHILIP RAY WORKMAN**

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**No. M1999-01334-SC-DPE-DD - Filed: May 9, 2007**

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**ORDER**

On January 17, 2007, this Court re-set the date for the execution of Philip Ray Workman to May 9, 2007. On February 1, 2007, the Governor of Tennessee directed the Commissioner of Correction to review the manner in which death sentences are administered in Tennessee and to provide new protocols and related written procedures for administering the sentence of death. On April 30, 2007, the Commissioner completed his review and forwarded the revised execution protocols to the Governor. After unsuccessfully seeking a stay of execution from the federal courts to litigate the constitutionality of the revised protocol, on May 8, 2007, at 10:18 p.m., Workman filed in this Court a Motion for Stay of Execution. Workman alleges that a stay is necessary to allow him an opportunity to file a complaint challenging the new protocol in the Chancery Court within two days. The relief Workman seeks is identical to that sought through the last several days and hours in the United States District Court for the Middle District of Tennessee, the Sixth Circuit Court of Appeals, and the United States Supreme Court. We deny Workman's Motion for two reasons.

First, Workman's claim is too late. This crime occurred on August 5, 1981. In 1982, a jury convicted Workman of first degree murder and imposed a sentence of death. This Court affirmed the conviction and sentence in 1984. See State v. Workman, 667 S.W.2d 44 (Tenn. 1984). In 1986 and 1988 Workman filed two unsuccessful petitions for post-conviction relief. See Workman v. State, 868 S.W.2d 705 (Tenn. Crim. App. 1993); Workman v. State, C.C.A. No. 111, 1987 WL 6724 (Tenn. Crim. App. 1987). In 2001 Workman unsuccessfully sought relief through a writ of error coram nobis. See State v. Workman, 111 S.W.3d (Tenn. Crim. App. 2002). Since 1994 Workman has pursued relief in the federal courts. On May 4, 2007, twenty-five years after this Court affirmed his conviction and sentence and almost nine years after lethal injection was adopted as an option for capital inmates, Workman filed a complaint in the federal district court challenging for the first time the constitutionality of the State's lethal-injection protocol. Less than three hours before his scheduled execution, Workman has requested from this Court a stay of execution to pursue these same claims in state court. "There is a strong equitable 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 entry of a stay." Nelson v. Campbell, 541 U.S. 637, 650 (2004).

Second and more importantly, neither the United States Supreme Court nor any other court has invalidated the three-drug protocol used by Tennessee and twenty-eight other jurisdictions. See Workman v. Bredesen, et al., No. 07-5562, \*8 (6th Cir. May 7, 2007). Indeed, this Court upheld the three-drug protocol in 2005. See Abdur'Rahman v. Bredesen, 181 S.W.3d 292 (Tenn. 2005). Since

our decision in Abdur'Rahman, the protocol has been refined; thus, Workman's challenge to the revised protocol has no likelihood of success on the merits.

At some point, the State has a right to impose a sentence not just because the State's interests in finality are compelling, but also because there is a "powerful and legitimate interest in punishing the guilty," which attaches to "the State and the victims of crime alike." Calderon v. Thompson, 523 U.S. 538, 556 (1998). After twenty-five years and countless court proceedings, that time has come.

Having considered the Motion for Stay of Execution, this Court finds that the Motion should be and hereby is DENIED.

It is so ORDERED.

PER CURIAM