

IN THE TENNESSEE SUPREME COURT  
AT NASHVILLE

STATE OF TENNESSEE )  
 )  
v. ) No. M1999-01334-SC-DPE-PD  
 )  
PHILIP RAY WORKMAN )

MOTION FOR STAY OF EXECUTION

It now appears that Philip Workman's prediction has come to pass: The combination of the April 30, 2007 release of the Commissioner's "Report On Administration Of Death Sentences In Tennessee" and the Commissioner's Revised 2007 Protocols along with Workman's May 9, 2007 execution date has left Workman without any meaningful way to challenge the new protocol.

It is not enough to say that this Court decided this issue in Abdur'Rahman v. Bredesen, 181 S.W.3d 292 (Tenn. 2005). Much has changed since the 2002 chancery court hearing in that case when the record was developed. The state of knowledge about thiopental in lethal injection has expanded greatly since that time, having been the subject of numerous court cases, studies, and botched executions. There is a growing body of medical, scientific, and other evidence which clearly shows that lethal injection using sodium thiopental, pancuronium bromide, and potassium chloride without monitoring of anesthetic depth risks torture. Workman respectfully provides this Court the extensive body of evidence showing this growing truth, including a published April 2007 medical report,<sup>1</sup> expert affidavits,<sup>2</sup> court decisions enjoining such protocols,<sup>3</sup> and accounts of botched

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<sup>1</sup> Exhibit 45.

<sup>2</sup> Exhibits 2, 18, 23, 31.

<sup>3</sup> Exhibits 10, 13, 14, 26, 28, 29, 36, 37, 38, 39, 40, 41, 42, 43, 44.

executions.<sup>4</sup> Even the creator of such protocols has questioned their efficacy.<sup>5</sup>

Exactly as he predicted, though, Workman will never get his day in court. Under the circumstances, he simply never could have litigated the new protocols to a final conclusion given the timeline under which he was placed by the State. That is why he requested relief earlier in this Court. See Exhibit 4. Unlike Workman, others who have recently faced execution but were reprieved will be able to have their claims heard. Workman has been left out, exactly as he predicted – but not without the dissent of Judge Campbell, Judge Cole, Justice Stevens, Justice Souter, and Justice Ginsburg – all who believe that Workman has been unjustly denied his day in court.

This is grossly unjust. Workman has the right not be tortured as much as any other person in this State. Therefore, this Court should intervene. Indeed, even the Attorney General previously agreed that court intervention would be permissible “should circumstances present at some point prior to May 9 that would warrant staying Workman’s execution date.”<sup>6</sup> Those circumstances have arrived – especially where the Governor also believes that “the administration of the death penalty *in a constitutional and appropriate manner* is a responsibility of the highest importance.” See Exhibit 3. A fundamental problem with Workman’s situation is that the new lethal injection protocol has not been subjected to any checks and balances: In Workman’s case, the Legislature has not spoken on the protocol, nor has he received, nor will he receive, a merits review of the protocol by the courts. This is the very recipe for the potential denigration of basic human rights which our democratic system was designed to avoid.

In the interests of justice, therefore, this Court should grant a stay of execution, requiring

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<sup>4</sup> Exhibits 19, 20, 21, 22, 24, 25, 27, 30, 32, 33, 34, 35.

<sup>5</sup> Exhibit 49.

<sup>6</sup> Exhibit 5, p. 2.

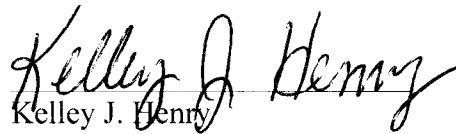
Workman to file a complaint challenging the new protocol in the Chancery Court within 2 days, and ordering the Chancery Court to dispose of the matter as expeditiously as possible, subject to immediate review by this Court. This will solve the problem which Workman sought to remedy previously, but which remains.

Philip Workman moves this Court to grant a stay of execution as requested in this motion. Justice is the highest calling of this Court. Workman humbly prays to have his day in court.

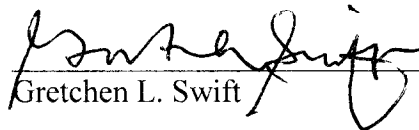
Respectfully Submitted,



Paul R. Bottei



Kelley J. Henry

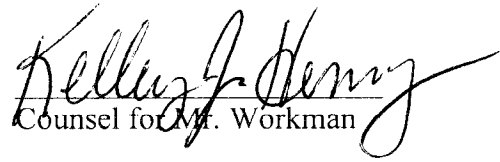


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**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing was served via hand delivery to counsel for the State of Tennessee on this 8<sup>th</sup> day May, 2007.

  
Counsel for Mr. Workman