

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED
JUL 21 2009
Clerk of the Courts

STATE OF TENNESSEE V. CECIL C. JOHNSON, JR.

No. M1981-00121-SC-DPE-DD - Filed: July 21, 2009

ORDER

On May 26, 2009, the State filed a Motion to Set Execution Date for Cecil C. Johnson, Jr. The motion stated that Johnson had completed the standard three-tier appeals process and that an execution date should therefore be set under Tennessee Supreme Court Rule 12.4(A).

On June 8, 2009, Cecil C. Johnson, Jr., filed a Response to Motion to Set Execution Date. The Response contends that the Motion should be denied because the excessive delay in carrying out the capital sentence and the arbitrariness and capriciousness of the sentence in Mr. Johnson's case violate the Eighth Amendment to the United States Constitution and Article I, § 16 of the Tennessee Constitution. The Response also asserts that concerns about the reliability of eyewitness testimony expressed in State v. Copeland, 226 S.W.3d 287 (Tenn. 2007), require that the Court "reach back" and grant Mr. Johnson's Rule 11 application denied by the Court on October 5, 1998, to review the Brady issue presented by that case. For all of these reasons, Mr. Johnson asserts that this Court should either re-sentence him to life imprisonment or grant the Rule 11 application that it denied in October 1998.

Having considered the Motion to Set Execution Date and the Response, the Court declines to re-sentence Mr. Johnson to life imprisonment or to "reach back" and grant his application for permission to appeal denied over a decade ago. Mr. Johnson has presented no legal basis for denying the State's Motion to Set Execution Date. Therefore, the State's motion to Set Execution Date is GRANTED. It is hereby ORDERED, ADJUDGED and DECREED by this Court that the Warden of the Riverbend Maximum Security Institution, or his designee shall execute the sentence of death as provided by law on the 2nd day of December, 2009, unless otherwise ordered by this Court or other appropriate authority.

Counsel for Cecil C. Johnson, Jr., shall provide a copy of any order staying execution of this order to the Office of the Clerk of the Appellate Court in Nashville. The Clerk shall expeditiously furnish a copy of any order of stay to the Warden of the Riverbend Maximum Security Institution.

IT IS SO ORDERED.

PER CURIAM