

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

IN RE: CECIL C. JOHNSON, JR.)
) DAVIDSON COUNTY
) ORIGINAL APPEAL
) No. 81-16-I

M 1981-00121-SC-DPE-DD

MOTION TO SET EXECUTION DATE

FILED
2009 MAY 26 PM 3:25
APPELLATE COURT CLERK
NASHVILLE

Pursuant to Rule 12.4(A), Rules of the Supreme Court of Tennessee, the State of Tennessee respectfully requests that the Court set an execution date for Cecil C. Johnson, Jr. In support of this motion, the State relies on the following:

1. Johnson was convicted by a Davidson County Criminal Court jury in 1980 of three counts of first-degree murder, two counts of armed robbery, and two counts of assault with intent to commit first-degree murder. He was sentenced to death for the murders and four consecutive life terms for the remaining convictions. This Court affirmed the judgment, *State v. Johnson*, 632 S.W.2d 542 (Tenn. 1982), and the United States Supreme Court denied a petition for a writ of certiorari. *Johnson v. Tennessee*, 459 U.S. 882 (1982).

2. Johnson subsequently sought post-conviction relief in the trial court, which conducted a hearing, made findings, and denied relief. The Tennessee Court of Criminal Appeals reversed, finding that, during closing argument, the prosecution had attempted to minimize the jurors' responsibility in imposing the death penalty in violation of *Caldwell v. Mississippi*, 472 U.S. 320 (1985). *Cecil C. Johnson v. State*, 1988 WL 3632 (Tenn. Crim. App. Jan. 20, 1988). However, this Court reversed and reinstated the judgment of the trial court. *Johnson v. State*, 797 S.W.2d 578 (Tenn. 1990).

On February 28, 1995, Johnson filed a second petition for post-conviction relief. The trial court denied relief, and the Court of Criminal Appeals affirmed. *State v. Cecil C. Johnson, Jr.*, No. 01C01-9610-CR-00442, 1997 WL 738586 (Tenn. Crim. App. Nov. 25, 1997). This Court denied Johnson's application for permission to appeal on October 5, 1998.

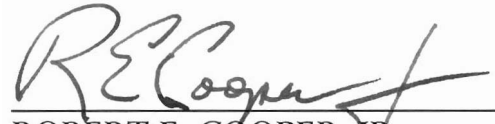
3. On January 18, 1999, Johnson filed a petition for a writ of habeas corpus in the United States District Court for the Middle District of Tennessee. On September 30, 2002, the district court entered a memorandum opinion and order granting the State's motion for summary judgment and dismissing the petition. The United States Court of Appeals for the Sixth Circuit affirmed the district court's judgment on April 29, 2008. *Johnson v. Bell*, 525 F.3d 466 (6th Cir. 2008), *reh'g and sugg. for reh'g en banc denied* (July 17, 2008). The United States Supreme Court denied a petition for a writ of certiorari on March 30, 2009, *Johnson v. Bell*, 129 S.Ct. 1668 (No. 08-7163), and denied

a petition for rehearing on May 18, 2009. *Johnson v. Bell*, 2009 WL 1361627 (U.S. 2009) (copy attached).

4. Johnson 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.

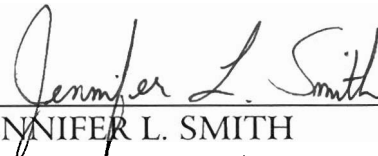
Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Motion has been forwarded via Facsimile and First-Class U.S. mail, postage prepaid on this the 21st day of May, 2009 to:

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The undersigned attorney of record prefers to be notified of any orders or opinions of the Court by Facsimile at (615) 532-7791



JENNIFER L. SMITH
Associate Deputy Attorney General

--- S.Ct. ----

--- S.Ct. ----, 2009 WL 1361627 (U.S.)

(Cite as: 2009 WL 1361627 (U.S.))

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Only the Westlaw citation is currently available.

Supreme Court of the United States
JOHNSON, CECIL C. V. BELL, WARDEN.
No. 08-7163.

May 18, 2009.

***1** The petition for rehearing is denied.

U.S.,2009.

Johnson v. Bell

--- S.Ct. ----, 2009 WL 1361627 (U.S.)

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