

**IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE**

PHILIP RAY WORKMAN)

v.)

STATE OF TENNESSEE)

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**No. M1999-01334-SC-DPE-PD
Filed: March 20, 2007**

RESPONSE TO MOTION TO VACATE EXECUTION DATE

On January 17, 2007, this Court re-set the date for execution of Philip Workman’s death sentence to May 9, 2007. On March 15, 2007, Workman moved this Court to vacate the May 9 date, pointing to an Executive Order issued on February 1, 2007, in which the Governor of Tennessee, “to ensure that death sentences are administered in a constitutional and appropriate manner,” ordered a review and revision of the State’s protocols and procedures for administering the death penalty, with such review and revision to be completed as soon as practical, but no later than May 2, 2007. Consequently, the Governor issued reprieves on February 1 to the four capital defendants whose sentences of death were scheduled to be carried out within the following ninety days, *i.e.*, prior to May 2, 2007.

In support of his motion to vacate, Workman points to the fact that this ninety-day “moratorium” expires “just a week before [his] scheduled May 9, 2007[,] execution date.” He is thus apparently of the view that, solely because the execution dates of these four other capital defendants were effectively vacated by virtue of the Governor’s order, he is entitled to have his date vacated as well. But neither law nor logic supports Workman’s view. The expectation implicit in the Governor’s order is that a revised death penalty protocol that is both constitutional and appropriate

will have been established by May 2, 2007. In other words, by May 9, 2007, when Workman's death sentence is scheduled to be executed, it is expected that his sentence will be carried out pursuant to a constitutional and appropriate protocol. The issuance of the Governor's order thus presents no basis on which to vacate the execution of Workman's sentence — indeed, it presents every reason *not* to do so.¹

Workman's speculation that the General Assembly "may pass" legislation that would impact upon the scheduled execution of his sentence likewise presents no basis for anticipatorily staying execution of his sentence. Should circumstances present at some point prior to May 9 that would warrant staying Workman's execution date, then this Court, or another court of competent jurisdiction, could certainly take that action at that time. At this time, however, there simply is no reason to do so. Accordingly, the motion to vacate the execution date of May 9, 2007, should be denied.

Respectfully submitted,

ROBERT E. COOPER, JR.

¹Contrary to Workman's intimations, there is nothing unjust or unfair in declining to vacate the execution of his sentence, while reprieves are issued to these other four defendants. Workman's case is not on the same footing as that of any of these defendants, all of whom had been facing only the first or second "real" dates scheduled for execution of their sentences when the Executive Order was issued. In contrast, Workman's May 9, 2007, date represents the *sixth* date set for execution of his sentence since the standard three-tier review of his conviction and sentence was completed in 1999. (Two of those executions were stayed by order of the United States Court of Appeals for the Sixth Circuit, one by order of this Court, one by executive reprieve, and one by the United States District Court for the Western District of Tennessee.)

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been delivered by first class mail, postage prepaid, and by facsimile, to Christopher Minton, at 810 Broadway, Suite 200, Nashville, Tennessee, 37203, on this the _____ day of March, 2007.

JOSEPH F. WHALEN
Associate Solicitor General

