

IN THE TENNESSEE SUPREME COURT
AT NASHVILLE

STATE OF TENNESSEE)
)
v.) No. M1999-01334-SC-DPE-PD
) Filed May 3, 2004
PHILIP RAY WORKMAN)

SUPPLEMENT TO PETITIONER’S OPPOSITION
TO MOTION TO SET EXECUTION DATE

As Philip Workman has emphasized, it is improper to set any execution date at this time, because he is presently being denied access to vital information showing the nature and scope of O.C. Smith’s alleged criminal attempts to sabotage Philip Workman’s case. Just last week, the United States Attorney filed with the United States District Court a sealed motion apparently containing critical information concerning O.C. Smith’s prosecution. United States v. Smith, W.D.Tenn. No. CR-04-20054, R. 20 (Sealed Motion)(Docket sheet attached as Exhibit 1). This recent sealed filing underlines the unfairness in the state’s request that Workman be executed while the truth about Smith remains hidden.

Obviously, the information contained in the sealed document is relevant to the Smith prosecution. Yet Philip Workman cannot currently get access to that critical information – or any other information concerning Smith’s criminal activities, activities which the Governor himself acknowledges to be relevant to the question whether Philip Workman should live or die. As a result of this secrecy, Philip Workman cannot inform this Court about the relevance of Smith’s alleged crimes to Workman’s death sentence. To allow an execution while Smith’s case remains clouded in secrecy is simply inconsistent “with fundamental notions of fairness implicit in due process.” Home Box Office v. Federal Communications Commission, 567 F.2d 9, 56 (D.C.Cir. 1977). See also Gardner v. Florida, 430 U.S. 349, 362 (1977)(due process prohibits death sentence based on

secret information which defendant cannot either explain or deny). Due process of law does not countenance an execution under these circumstances. See e.g., In Re Oliver, 333 U.S. 257 (1947); Detroit Free Press v. Ashcroft, 303 F.3d 681 (6th Cir. 2002)(“Democracies die behind closed doors.”).

It appears that the United States Attorney is not willing to divulge critical information about Smith’s alleged plot to undermine Philip Workman, because the United States Attorney does not want to prejudice his own case against Smith. When, however, criminal and other matters are intertwined (as they are here) it is common practice for the criminal matter to proceed first. That is the proper course for this Court to take here, especially where Philip Workman cannot apprise this Court about the scope and nature of Smith’s criminal activities - merely because that information is currently being hidden from Workman in order to ensure that Smith is prosecuted to the full extent of the law.

Accordingly, in light of the United States Attorney’s recent sealed filing in the United States District Court, this Court should not set an execution date. Rather, this Court should await the resolution of Smith’s case. After that, given his due process right to be heard, Philip Workman can fully inform this Court why, in light of Smith’s activities (and possibly proven crimes), no execution date should be set. Fundamental fairness and the due process guarantees of the Tennessee Constitution and the Fourteenth Amendment demand nothing less.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been hand-delivered to Joseph Whalen, Office of the Attorney General, 425 5th Avenue North, Nashville, Tennessee 37243 on this ___ day of _____.