

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

PHILIP RAY WORKMAN,)	
)	
)	
v.)	No. M1999-01334-SC-DPE-PD
)	
)	Filed April 16, 2004
STATE OF TENNESSEE.)	
)	

MOTION TO RESET DATE OF EXECUTION

On June 2, 2003, all state court proceedings in this matter having concluded, this Court granted the State’s motion to dissolve a previously-entered stay of execution of Philip Ray Workman’s 1982 death sentence and reset that execution for September 24, 2003. On September 15, 2003, the Governor of Tennessee, acting on the recommendation of the Tennessee Attorney General, granted Workman a reprieve from that execution for four (4) months, until January 15, 2004. The Governor’s reprieve was based on the pendency of a federal criminal investigation into an unrelated matter involving Shelby County Medical Examiner O.C. Smith. Dr. Smith had previously testified for the State in Workman’s clemency proceedings.¹

As of January 15, 2004, the federal investigation remained pending, and the Governor

¹On September 3, 2003, Workman filed a second petition for federal habeas corpus relief, as well as a motion under Fed.R.Civ.P. 60(b) to reopen his first such petition, in the United States District Court for the Western District of Tennessee. *See Philip Workman v. Ricky Bell*, Nos. 03-2660, 94-2577 (W.D.Tenn.). On September 23, 2003, the district court ordered both matters held in abeyance pending a decision by the Sixth Circuit Court of Appeals in *Abu-Ali Abdur’Rahman v. Ricky Bell*, Nos. 02-6547, 02-6548 (6th Cir.). But neither of these federal pleadings, which the State maintains are barred as successive petitions under 28 U.S.C. § 2244(b), presents any reason for this Court to decline to set a new date of execution.

extended the reprieve for an additional three (3) months, until April 15, 2004. In February 2004, in the wake of the issuance of an indictment against Dr. Smith, the Governor asked Tennessee State Medical Examiner Bruce Levy to conduct an independent review of Dr. Smith's clemency hearing testimony. On April 15, 2004, Dr. Smith issued his report. (copy attached) Based on the results of that report, the Governor declined to further extend the reprieve and allowed it to expire.

Though the reprieve from execution was issued in September 2003 in the interest of justice, it is in that same interest, with the reprieve having now expired, that the State of Tennessee respectfully moves that a new date be set for the execution of Workman's sentence. *See* Tenn.Sup.Ct.R. 12.4(E).

Respectfully submitted,

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**DESIGNATION OF ATTORNEY OF RECORD
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The State's attorney of record prefers to be notified via facsimile at 615-532-7791.

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, counsel of record for Philip Ray Workman, at 810 Broadway, Suite 200, Nashville, Tennessee, 37203, on this the _____ day of April, 2004.

JOSEPH F. WHALEN
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