

IN THE SUPREME COURT OF TENNESSEE

FILED

AT NASHVILLE

2010 MAY 10 PM 3:42

APPELLATE COURT CLERK
NASHVILLE

IN RE:
BILLY RAY IRICK

) KNOX COUNTY
) Supreme Court No. 180
)

M 1987-00131-SC-DPE-PD

MOTION TO SET EXECUTION DATE

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 Billy Ray Irick ("Irick"). In support of this motion, the State would show the following:

1. On November 1, 1986, a Knox County, Tennessee, jury convicted Irick of the felony murder and two counts of aggravated rape of a seven-year-old girl. He was sentenced to death on the strength of four aggravating factors: the victim was a child; the murder was especially heinous, atrocious, or cruel; the murder was committed for the purpose of avoiding arrest; and the murder was committed during the commission of the felony of rape. Upon direct appeal, this Court affirmed the judgment. *See State v. Irick*, 762 S.W.2d 121, 124, 135 (Tenn. 1988). The United States Supreme Court denied a petition for a writ of certiorari. *Irick v. Tennessee*, 489 U.S. 1072 (1989).

2. Irick filed a petition for post-conviction relief in 1989. The post-conviction trial court dismissed the petition, and the Tennessee Court of Criminal Appeals affirmed. In so doing, the court invalidated one of the aggravating circumstances, the felony murder aggravator, but concluded that the error was harmless beyond a reasonable doubt. *See Irick v. State*, 973 S.W.2d 643, 659-61 (Tenn. Crim. App. 1998), *perm. app. denied* June 15, 1998. This Court denied an application for permission to appeal. *See id.*


3. On October 23, 1998, Irick initiated federal habeas proceedings in the United States District Court for the Middle District of Tennessee. *Irick v. Bell*, No. 3:98-cv-1012 (M.D. Tenn.). The district court granted a stay of execution and transferred the case to the Eastern District of Tennessee on October 26, 1998. *Id.* Irick filed a petition for writ of habeas corpus on July 29, 1999, and an amended petition on October 1, 1999. The district court granted summary judgment in favor of the respondent on March 30, 2001. *Irick v. Bell*, No. 3:98-cv-00666 (E.D. Tenn.). The United States Court of Appeals for the Sixth Circuit affirmed the district court's judgment denying habeas corpus relief on December 18, 2008. *Irick v. Bell*, 565 F.3d 315 (6th Cir. 2009), *reh'g and sugg. for reh'g en banc denied* (July 27, 2009). The United States Supreme Court denied a petition for a writ of certiorari on February 22, 2010, *Irick v. Bell*, 78 U.S.L.W. 3480, 2010 WL 596620, and denied a petition for rehearing

on April 19, 2010. *Irick v. Bell*, No. 09-7257, 2010 WL 1525954 (U.S. 2010) (copy attached)

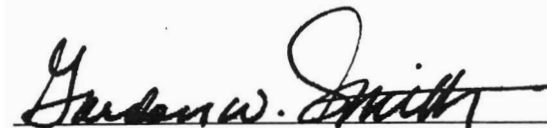
4. Irick has completed the standard three-tier appeals process, making the setting of an execution date appropriate. *See* Rule 12.4(A).

For the reasons stated, an execution date should be set.


Respectfully submitted,



ROBERT E. COOPER, JR.
Attorney General & Reporter



GORDON W. SMITH
Associate Solicitor General

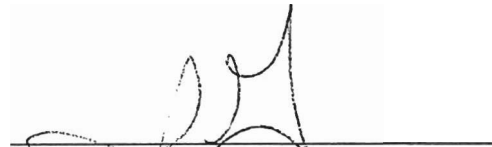


JAMES E. GAYLORD
Assistant Attorney General
Attorney of Record
425 Fifth Avenue North
P.O. Box 20207
Nashville, Tennessee 37202-0207
Jim.Gaylord@ag.tn.gov
Phone: (615) 532-7356
Fax: (615) 532-7791

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 10 day of ~~April~~ ^{May}, 2010 to: Howell G. Clements, Clements & Cross, 1010 Market Street, Suite 401, Chattanooga, TN 37402 and C. Eugene Shiles, Spears, Moore, Rebman, & Williams, P.O. Box 1749, Chattanooga, TN 37401.

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



JAMES E. GAYLORD
Assistant Attorney General