

IN THE CHANCERY COURT
FOR TENNESSEE'S 20TH JUDICIAL DISTRICT
AT NASHVILLE

FILED

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CLERK AND MASTER
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ABU-ALI ABDUR'RAHMAN,

Plaintiff,

vs.

DON SUNDQUIST, Governor of the State of
Tennessee

DONAL CAMPBELL, Commissioner,
Tennessee Department of Correction

RICKY BELL, Warden of Riverbend Maximum
Security Institution,

VIRGINIA LEWIS, Warden of Special Needs
Facility

TENNESSEE DEPARTMENT OF
CORRECTION, and

JOHN DOES 1-100.

Defendants.

No. 02-2236-III

COMPLAINT FOR DECLARATORY, INJUNCTIVE AND OTHER RELIEF

Plaintiff for his complaint respectfully states as follows:

PARTIES:

1. Plaintiff, Abu-Ali Abdur'Rahman, is a citizen and resident of Nashville, Davidson County, Tennessee. He is incarcerated on death row, Unit 2, Riverbend Maximum Security Institution, 7475 Cockrill Bend Industrial Drive, Nashville, Davidson County, Tennessee 37209. Plaintiff is indigent, and he has been declared indigent by the Tennessee Supreme Court, the

United States District Court for the Middle District of Tennessee, and the United States Supreme Court.

2. Defendant, Don Sundquist, is Governor of the State of Tennessee. His business address is: Office of the Governor, State Capitol, Nashville, Davidson County, Tennessee 37243.

3. Defendant, Donal Campbell, is the Commissioner of the Tennessee Department of Correction. His business address is: Department of Correction, Fourth Floor, Rachel Jackson Building, 320 Sixth Avenue, North, Nashville, Davidson County, Tennessee 37243.

4. Defendant Tennessee Department of Correction (hereinafter referred to as "TDOC") is an agency of the state of Tennessee.

5. Defendant, Ricky Bell, is the Warden of the Riverbend Maximum Security Institution where plaintiff resides. His business address is: 7475 Cockrill Bend Industrial Drive, Nashville, Davidson County, Tennessee 37209.

6. Defendant, Virginia Lewis, is the Warden of the Special Needs Facility of the Tennessee Department of Correction. This is the state-licensed healthcare facility where the lethal substances to be utilized in an execution by lethal injection are procured, stored, and provided. Her business address is: 7575 Cockrill Bend Industrial Drive, Nashville, Davidson County, Tennessee 37209.

7. John Does 1-100 are natural persons unknown to plaintiff who are agents, employees or independent contractors working with the other defendants to effectuate plaintiff's execution. Their identities are unknown to plaintiff due to certain statutes and rules which permit the other defendants to withhold information about their identities.

JURISDICTION AND VENUE:

8. This Court has jurisdiction of this matter under the following statutes: T.C.A. §§ 16-11-101 *et seq.* (Powers of the Chancery Court); 29-1-101 *et seq.* (Extraordinary Process); 29-14-101 *et seq.* (Declaratory Judgments); 4-5-225 (declaratory judgments relating to the legal validity or applicability of a statute, rule or order of an agency); 8-44-106 (Enforcement of Open Meetings Act).

9. Venue is proper in this Court under T.C.A. § 405-225 (a); and also because all of the known parties are located in Davidson County, Tennessee, and all events giving rise to this action occurred or will occur in Davidson County, Tennessee.

BACKGROUND:

10. Plaintiff was convicted of first degree murder and sentenced to death in Davidson County, Tennessee, in 1987.

11. By Order of the Tennessee Supreme Court, Plaintiff's execution date was set for April 10, 2002.

12. The method of executing a person sentenced to death is governed by T.C.A. § 40-23-114 (2000).

13. Pursuant to T.C.A. § 40-23-114, because plaintiff was sentenced to death for an alleged offense that occurred prior to January 1, 1999, plaintiff was offered an election of means of execution between electrocution or lethal injection. On March 26, 2002, plaintiff was presented with a form titled "Affidavit to Elect Method of Execution," a copy of which is attached hereto as Exhibit A. Plaintiff refused to fill out or sign this Affidavit and therefore refused to elect a method of execution. Accordingly, the state takes the position that, pursuant to T.C.A. § 40-23-114(a) and (c), plaintiff's method of execution shall be lethal injection.

14. The protocol for execution by lethal injection is set forth in the so-called "Execution Manual" issued by the Tennessee Department of Correction, a complete copy of which is attached hereto as Exhibit B (hereinafter referred to as the "TDOC Execution Manual").

15. On April 3, 2002, plaintiff, through his counsel, served on defendant Donal Campbell, Commissioner of the Tennessee Department of Correction, a request for a declaratory order pursuant to T.C.A. § 4-5-223, a copy of which is attached hereto as Exhibit C and the contents of which are incorporated herein by reference.

16. On April 7, 2002, plaintiff was placed on death watch. On April 8, 2002, the United States Supreme Court issued an order staying plaintiff's execution, and shortly thereafter plaintiff was taken off death watch. On April 22, 2002, the United States Supreme Court issued a writ of *certiorari*, granting plaintiff's petition to review his federal habeas corpus proceeding. Plaintiff's case is currently pending before the United States Supreme Court, and the stay of execution issued by the United States Supreme Court remains in effect.

17. On May 28, 2002, defendant Donal Campbell issued a letter, a copy of which is attached hereto as Exhibit D, denying plaintiff's request for a declaratory order.

18. While plaintiff's case is pending before the United States Supreme Court, and while plaintiff's execution is stayed by the federal court, plaintiff takes the position that all issues concerning the validity and constitutionality of the TDOC's lethal injection protocol are premature and are not ripe for judicial consideration. Plaintiff is filing this action as a protective measure, in light of TDOC's written position that plaintiff has "sixty (60) days from the date of [TDOC's] letter to file a petition for declaratory judgment in the Davidson County Chancery Court." *See* letter, Exhibit D hereto.