IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

STATE OF TENNESSEE,	**)**	
	)	
	)	
v.	**)**	**No. M1999-00019-SC-DPE-PD**
	)	
	)	**Filed: November 30, 2005**
SEDLEY ALLEY.	**)**	
	)	

MOTION TO RESET DATE OF EXECUTION

On January 16, 2004, all state court proceedings in this matter having concluded, this Court ordered that Sedley Alley's 1987 death sentence be executed on June 3, 2004. On May 19, 2004, the United States District Court for the Western District of Tennessee issued an order staying the execution of the defendant Alley's sentence. The stay was issued "pending the Sixth Circuit's decision in *Abdur'Rahman* [*v. Bell*] and [the district court's] subsequent ruling on [Alley's] Rule 60(b) motion." *Sedley Alley v. Ricky Bell,* No. 97-3159-D/V (W.D.Tenn. May 19, 2004) (order granting stay of execution) (copy attached). On November 28, 2005, the district court ruled on, and denied, the defendant's Rule 60(b) motion, thus dissolving the previously issued stay. *Sedley Alley v. Ricky Bell*, No. 97-3159-D/V (W.D.Tenn. Nov. 28, 2005) (order denying motion for relief from judgment) (copy attached).[1]

[1]As the district court noted in its order, the Sixth Circuit decided *Abdur'Rahman* on December 13, 2004; its decision was subsequently vacated by the United States Supreme Court in light of the decision in *Gonzalez v. Crosby*, 125 S.Ct. 2641 (2005), in which "the Court addressed the interplay of [the habeas statute's] restrictions on successive habeas applications and motions for relief from judgment pursuant to Rule 60(b)." *Id.*, p. 3. *See Bell v. Abdur'Rahman*, 125 S.Ct. 2991 (2005).

Accordingly, and pursuant to Tenn.Sup.Ct.R. 12.4(E), the State moves that a new date of execution be set forthwith. Though such a date can be no less than seven (7) days from this Court's order, *see id.*, the State respectfully submits that the Court should set the execution on a date that is no *more* than twenty-one (21) days after the Court's order. Experience shows that setting the date any farther into the future will serve only to invite additional frivolous litigation, and the litigation in this case has already spanned some eighteen years since the defendant's conviction and sentence.

The defendant will no doubt argue that the Court should refrain from setting a new date until he has been afforded an opportunity to appeal the district court's denial of his Rule 60(b) motion. But the district court's order makes plain that any such appeal would lack merit. Moreover, at this juncture, with the standard three-tier review process having long since concluded, the State is not required to stand idly by while the condemned prisoner exhausts, at his leisure, all appellate review of the denial of postjudgment relief. Indeed, the United States Supreme Court has recognized that upon the denial of federal habeas relief, "the State's interests in finality are all but paramount." *Calderon v. Thompson*, 523 U.S. 538, 557 (1998). But if the state criminal justice process does not act to protect its "all but paramount" interest in the finality of its own judgments, then it can hardly expect the federal courts to do so. With the dissolution of the federal court's stay of execution, which was issued more than eighteen months ago, it is incumbent upon the State to assert its interest in "execut[ing] its moral judgment in [this] case" and allow "the victims of crime [to] move forward knowing the moral judgment will be carried out." *Id.*, 523 U.S. at 556.

Respectfully submitted,

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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 Paul Bottei, at 810 Broadway, Suite 200, Nashville, Tennessee, 37203, on this the _____ day of November, 2005.

_____
JOSEPH F. WHALEN
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