

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

SEDLEY ALLEY)	
)	
Petitioner-Appellant)	
)	No. M1991-00019-DPE-DD
v.)	Filed May 20, 2004
)	
STATE OF TENNESSEE)	
)	
Respondent-Appellee)	

MOTION TO VACATE EXECUTION DATE

Petitioner Sedley Alley respectfully moves this Court to vacate a current June 3, 2004 execution date in light a May 19, 2004 stay of execution entered by the United States District Court for the Western District of Tennessee. Given the federal court order, as well as ongoing proceedings in the Court of Criminal Appeals and this Court concerning Petitioner's request for DNA analysis, this Court should vacate the June 3 date, subject to being reset upon the completion of appellate review of the DNA issues. In support of this motion, Petitioner states:

1. Petitioner currently has pending before the United States District Court a motion for relief from judgment. Alley v. Bell, No. 97-3159 (W.D.Tenn.). The resolution of that motion shall require application of the Sixth Circuit's impending decision in Abdur'Rahman v. Bell, 6th Cir. Nos. 02-6547, 02-6548, which was argued in December, 2003. In light of Abdur'Rahman v. Bell, on May 19, 2004, the United States District Court has entered a stay of execution pending the final decision in Abdur'Rahman and the District Court's final decision on Sedley Alley's motion.

2. The District Court's stay of execution now places this case in a much different posture than it was just several days ago.

3. Before the issuance of the stay, Sedley Alley had requested expedited consideration

of his DNA appeal in the Tennessee Court of Criminal Appeals. He had also requested that this Court assume jurisdiction over that appeal, and decide the appeal on an expedited basis. Before the issuance of the stay, the Court of Criminal Appeals set Friday May 21 for submission of the case.

4. The valid U.S. District Court stay appears to have relieved the necessity of expedited review by both the Court of Criminal Appeals and/or this Court. In fact, given the critical issues concerning access to DNA evidence involved in this capital case (which have never been addressed by this Court), resolution of the issues would benefit by allowing additional time for review.

5. Accordingly, because the United States District Court has already stayed Sedley Alley's execution, it would be appropriate for this Court to vacate the June 3 date as well. This will fully eliminate any time pressure on the Tennessee courts for deciding the issues, especially where the federal courts have stayed the execution anyway to await a decision in Abdur'Rahman.

6. Upon vacating the date, Sedley Alley's motions for stay of execution in this Court (and the Court of Criminal Appeals) would be rendered moot. Further, his pending motions for production of the evidence would not need to be considered on an emergency basis, and his motion for this Court to assume jurisdiction would also lack the exigency that existed at the time the motion was filed.

7. In sum, by vacating the execution date when it has been stayed already, this Court can facilitate a more deliberate and careful examination of the issues before the Tennessee courts.

8. Of course, should the Court of Criminal Appeals and/or this Court ultimately deny Sedley Alley's request for DNA evidence, this Court would be free to reset an execution date.

CONCLUSION

In light of the United States District Court stay and the benefits gained by allowing the Court

of Criminal Appeals and this Court to decide Sedley Alley's case on a non-emergency basis, this Court should vacate the June 3 execution date.

Respectfully Submitted,

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AFFIDAVIT OF COUNSEL

I affirm that all the information contained in this "Motion To Vacate Execution Date" is true and correct to the best of my knowledge.

Donald E. Dawson

Subscribed and sworn before me this ____ day of May, 2004

Notary Public, State of Tennessee

My Commission Expires:

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing motion has been served this day upon the Office of the Attorney General, 425 Fifth Avenue North, Nashville, Tennessee 37243.

Date: _____

Donald E. Dawson