

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

PHILIP WORKMAN,)	<u>FOR PUBLICATION</u>
)	
Respondent,)	<u>Filed: January 3, 2000</u>
)	
V.)	
)	
PD)	S.Ct. No. M1999-01334-SC-DPE-
STATE OF TENNESSEE,)	
)	
Movant.)	

ORDER

This cause came on to be heard upon the motion of the State of Tennessee requesting that an execution date be set in the above-styled case.

The respondent, Philip Workman, filed a **A**Response to Motion to Set Execution Date and Motion for Certificate of Commutation,[@]alleging that he was convicted upon perjured testimony and that he is not guilty of capital murder. The State filed a reply and response, arguing that the respondent is not entitled to further delay in the imposition of his sentence of death and that his case is not an appropriate one for this Court to consider issuance of a certificate of commutation.

Under the Tennessee Constitution, the power to commute a death sentence is vested in the Governor. Tenn. Const. Art. III, ['] 6. In addition, the Tennessee General Assembly has passed enabling legislation providing the Governor with several options for granting clemency. Tennessee Code Annotated Section 40-27-101 confers upon the Governor the general **A**power to grant reprieves, commutations and pardons in all criminal cases after conviction, except impeachment.[@] Section 40-27-104 grants the Governor the discretion to remit a portion of a prisoner=s sentence upon the recommendation of the board of probation and parole. Two statutes speak directly to the issue of commutation of death sentences. Pursuant to Tenn. Code Ann. ['] 40-27-105, upon application for a pardon by a person sentenced to death, the Governor may commute the sentence to life imprisonment if he or she **A**is of [the] opinion that

the facts and circumstances adduced are not sufficient to warrant a total pardon.® This Court has no role in clemency proceedings except for that provided by Tenn. Code Ann. ' 40-27-106. Under that provision, the governor may commute the punishment from death to life imprisonment upon the certificate of this Court, Athat in its opinion, there are extenuating circumstances attending the case, and that the punishment ought to be commuted.® Id.

The respondent alleges several reasons why this Court should issue a certificate of commutation. First, he asserts that Harold Davis, who testified at trial that he saw the respondent shoot the victim, has since recanted his testimony. Second, citing the opinion of two experts, he contends that the fatal shot was not fired from his gun. Finally, he challenges this Court's and the Sixth Circuit Court of Appeal's prior characterizations of his testimony at trial as a confession.® See State v. Workman, 667 S.W.2d 44 (Tenn. 1984); Workman v. Bell, 160 F.3d 276 (6th Cir. 1998). The State counters that the respondent's assertions are inherently suspect and that the Court should consider only record facts.

While members of this Court disagree regarding the role of the Court in recommending commutation, we all agree on two basic precepts: first, on the issue of recommending commutation, the Court should consider only facts contained in the record, or facts which are uncontroverted. Second, we all agree there is no legal basis why an execution date should not be set because the respondent has exhausted all judicial remedies and the conviction and sentence are final as a matter of law.

The respondent has cited no authority that would allow this Court to consider unproven assertions contained in a petition that challenge the accuracy of the jury's verdict and the credibility of the evidence over seventeen years after the judgment of conviction and also after the exhaustion of direct appeals, state post-conviction procedures and federal habeas corpus procedures. The Court's jurisdiction is appellate only, Tenn. Code Ann. ' 16-3-201(a), and we are bound by precedent and statutes setting forth the process of appellate review. Moreover, certificates of commutation are issued pursuant to Tenn. Code Ann. ' 40-27-106 only when the

Extenuating circumstances attending the case are based upon the facts in the record, see Bass v. State, 231 S.W.2d 707 (Tenn. 1950), or a combination of record facts and new evidence that is uncontroverted, see Anderson v. State, 215 Tenn. 83, 383 S.W.2d 763 (1964); Green v. State, 88 Tenn. 634 (1890). Section 40-27-106 does not authorize relief when a death-sentenced prisoner, in what amounts to an original action, relies upon extra-judicial facts and challenges the accuracy of the jury's verdict and the credibility of the evidence upon which his or her conviction was based. In contrast, we note that the Governor may review a request for commutation without being bound by such limitations.¹

After careful review of the record of the proceedings in this case, the majority concludes that the record supports both the conviction and sentence. The respondent has presented no extenuating circumstances that warrant issuance of a certificate of commutation. Accordingly, the Motion for Certificate of Commutation is DENIED.

Furthermore, all members of the Court agree that there is no legal basis why an execution date should not be set. The respondent has unsuccessfully challenged his conviction and sentence through direct appeal to this Court and has unsuccessfully pursued state post-conviction and federal habeas corpus remedies. The federal proceedings were completed when the United States Supreme Court rejected his petition to rehear on November 29, 1999. He has thus exhausted the standard three-tier appeals process. There exists no procedure, no method, and no means by which the conviction or the sentence can be further tested or scrutinized under the procedural guidelines within which this Court must function. His case is therefore ripe for the

¹ Despite the limitations on this Court's consideration of new facts, we note that when evidence supporting the respondent's current allegations was presented in appropriate proceedings, it was considered and rejected by both state and federal courts. See Workman v. State 868 S.W.2d 705 (Tenn. Crim. App. 1993), app. denied (Tenn. 1993), cert. denied, Workman v. Tennessee 510 U.S. 117, 114 S. Ct. 1207 (1994); Workman v. Dutton No. 94-2577 GA (W.D. Tenn. filed Oct. 28, 1996) aff'd sub nom. Workman v. Bell 178 F.3d 759 (6th Cir. 1998), cert. denied 120 S. Ct. 264 (Oct. 4, 1999), reh'g denied ___ S.Ct. ___ (Nov. 29, 1999).

setting of an execution date. Accordingly, the State's motion to set an execution date is GRANTED. It is hereby ORDERED, ADJUDGED and DECREED by this Court that the Warden of the Riverbend Maximum Security Institution, or his designee, shall execute the sentence of death as provided by law on the 6th day of April, 2000, unless otherwise ordered by this Court or other appropriate authority.

Counsel for Philip Workman shall provide a copy of any order staying execution of this order to the Office of the Clerk of the Appellate Court in Nashville. The Clerk shall expeditiously furnish a copy of any order of stay to the Warden of the Riverbend Maximum Security Institution.

Riley Anderson, Chief Justice

CONCUR:

Holder, J.

Drowota, J. - see separate Concurring Order

Barker, J. - see separate Concurring Order

Birch, J. - Concurring in Part and Dissenting in Part - see separate Order