

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

STATE OF TENNESSEE,)	
)	
Appellee,)	DAVIDSON CRIMINAL
)	No. M2003-00539-SC-DDT-DD
v.)	(Capital Case)
)	
PAUL DENNIS REID, JR.,)	
)	
Appellant.)	

RESPONSE OF THE STATE OF TENNESSEE
IN OPPOSITION TO APPELLANT'S
MOTION FOR A STAY OF EXECUTION

Paul Dennis Reid, Jr., through counsel, has moved for a stay of this Court's order setting a January 3, 2008, execution date. Reid asks that this Court stay his execution date because it falls within the one-year post-conviction statute of limitations under Tenn. Code Ann. § 40-30-102(a), the one-year limitation for filing a petition for writ of habeas corpus under 28 U.S.C. § 2244(d), and the one-year statute of limitation for filing a challenge to Tennessee's lethal injection protocol under *Cooley v. Strickland*, 479 F.3d 412, 422 (6th Cir. 2007) (holding that an execution-protocol challenge accrues "upon conclusion of direct review in the state court or the expiration of time for seeking such review."). Reid argues that the Court's January 3 execution date "unfairly cuts short" his right to seek relief in each of those proceedings, and the Court's order should be vacated. The motion should be denied.

On December 27, 2006, this Court affirmed Reid's convictions and death sentences for the 1997 first-degree murders of Ronald Santiago, Andrea Brown, and Robert Sewell at a McDonald's restaurant in Davidson County, Tennessee.¹ The Court contemporaneously set an execution date of January 3, 2008. *State v. Reid*, 213 S.W.3d 792 (Tenn. 2006). The Court denied rehearing on January 17, 2007, and the United States Supreme Court denied certiorari on October 15, 2007. *Reid v. Tennessee*, No. 06-11775, 2007 WL 2982289 (U.S. Oct. 15, 2007).

Reid contends that, because he has one year from the final action of this Court on direct appeal in which to file a post-conviction petition, the Court's order "unfairly cuts short" — by thirteen days — his opportunity to initiate state post-conviction proceedings. Reid's argument is without merit. Tenn. Code Ann. § 40-30-220(a) provides: "When affirming a conviction and sentence of death on direct appeal, the Tennessee supreme court shall contemporaneously set a date for an execution. Such date shall be no less than four (4) months from the date of the judgment of the Tennessee supreme court." As this Court noted in an order denying a previous motion for a stay of execution filed on Reid's behalf related to two other of his seven death sentences, this statutory provision "clearly authorizes this Court to set an execution before the expiration of the one-year post-conviction statute of limitations." *State v. Paul*

¹Reid was also convicted in the same trial of the attempted murder of Jose Ramirez Gonzalez and of especially aggravated robbery for which he was sentenced to 25 years each to be served consecutively to each other and to Reid's other non-death sentences. *State v. Reid*, 213 S.W.3d 792, 822 (Tenn. 2006).

Dennis Reid, Jr., No. M1999-00803-SC-DDT-DD (Tenn. Apr. 22, 2003). Here, the Court set Reid's execution more than one year beyond its decision affirming his convictions and death sentences, an action well within the applicable statutory framework. Moreover, the order does not run afoul of Tenn. Sup. Ct. Rule 12.3 ("Setting Execution Date at Conclusion of State Post-Conviction Proceedings") or 12.4 ("Setting Execution Date at Conclusion of Standard Three-Tier Appeals Process"), since Reid has not yet pursued either post-conviction or federal habeas corpus relief in relation to the convictions and sentences in this case.

Likewise unavailing is Reid's plea for a stay of execution during the pendency of the one-year statute of limitations applicable to federal habeas corpus proceedings. See 28 U.S.C. § 2244(d)(1) ("A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court."). In *West v. Bell*, 242 F.3d 338 (6th Cir. 2001), the Sixth Circuit firmly rejected the contention that the federal habeas statute of limitations "gives a death-sentenced prisoner a free one-year period in which state execution processes cannot touch him," noting that "[t]here simply is no such rule." 242 F.3d at 242.

Finally, Reid argues that the January 3 execution date "unfairly cuts short" his right to litigate his challenge to Tennessee's lethal injection protocol. However, this Court upheld Tennessee's prior three-chemical protocol under both federal and state constitutions in *Abdur'Rahman v. Bredesen*, 181 S.W.3d 292 (Tenn. 2005), and the

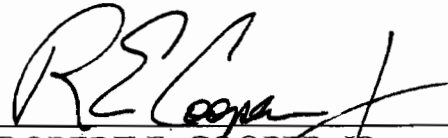
United States Supreme Court has never held the three-chemical protocol — used by Tennessee, 29 other states and the federal government — to be violative of the federal constitution. *See State v. Pervis Payne*, No. M1998-00096-SC-DPE-DD (Tenn. Oct. 22, 2007) (denying motion for stay of execution pending inmate’s challenge to Tennessee’s current lethal injection protocol).² Moreover, on October 24, 2007, Reid’s sister, Linda Martiniano, filed a complaint on his behalf in the United States District Court for the Middle District of Tennessee challenging Tennessee’s lethal injection protocol. As this Court has previously observed, a “request for a stay of execution in order to litigate claims in a federal court is more appropriately addressed to that court.” *See Payne, supra* (quoting *Coe v. State*, 17 S.W.3d 251 (Tenn. 2000)).³

²The 2007 revisions to the protocol by the Tennessee Department of Correction retained the same three-chemical combination at issue in *Abdur’Rahman*. *See Workman v. Bredesen*, 486 F.3d 896, 902 (6th Cir. 2007) (following a comprehensive review of Tennessee’s death penalty protocol and procedures in 2007, the State “decided to retain the three-drug protocol it had adopted in 1998”).

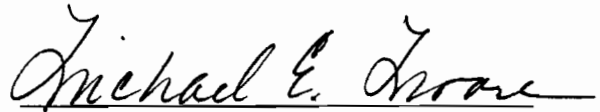
³Moreover, Reid presently faces his *third* imminent execution date under the three-chemical protocol he now challenges, having received last-minute stays of execution in April 2003 and June 2006 on four other death sentences. However, at no point in advance of either of those dates did he challenge Tennessee’s lethal injection protocol. Under these circumstances, a decision concerning where the equities lie for purposes of the injunctive relief requested is best left to the federal district court in which his case is now pending.

WHEREFORE, Reid's motion for a stay of execution should be denied.

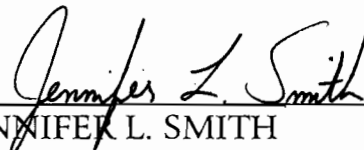
Respectfully submitted,



ROBERT E. COOPER, JR.
Attorney General & Reporter



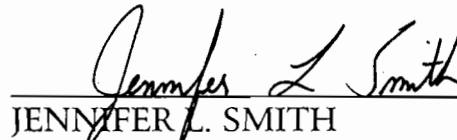
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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing was served by facsimile and by mailing same, first-class and postage prepaid, to Thomas A. Bloom, 911 Marengo Lane, Nashville, TN 37204, on the 15th day of November, 2007.



JENNIFER L. SMITH
Associate Deputy Attorney General