

No. 06-5860

IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

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LINDA MARTINIANO  
Next Friend for Paul Reid  
Petitioner-Appellee

v.

RICKY BELL  
Respondent-Appellant

---

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE

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MOTION TO VACATE STAY  
OF EXECUTION OF DEATH SENTENCE

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PAUL G. SUMMERS  
Tennessee Attorney General

MICHAEL E. MOORE  
Solicitor General

JENNIFER L. SMITH  
Associate Deputy Attorney General  
425 Fifth Avenue North  
Nashville, Tennessee 37243  
(615) 532-7357

## INTRODUCTION

Paul Dennis Reid stands convicted of the first degree murder of seven individuals, committed over the course of two months between February and April of 1997. He has been sentenced to death for all seven murders. Two of those convictions and sentences were affirmed by the Tennessee Supreme Court on May 24, 2005. *State v. Reid*, 164 S.W.3d 286 (6th Cir. 2005). On September 26, 2005, the Tennessee Supreme Court set a June 28, 2006, execution date. *State v. Reid*, No. M2001-02753-SC-DDT-DD (Tenn. Sept. 26, 2005) (Attachment 1). Reid has affirmatively and repeatedly requested since 2001 that he be allowed to forgo his appeals from the seven death sentences that he has received. In the case at hand, when Reid chose not to file a petition for post-conviction relief in state court, Reid's sister, Linda Martiniano, on May 23, 2006, sought to proceed on his behalf as next friend. In addition, she moved for a stay of Reid's June 28th execution. Following a hearing, the Montgomery County Circuit Court, on June 13, 2006, dismissed the petition and the motion for appointment of counsel after finding that the submissions failed to satisfy the prerequisites for next friend standing as set forth by the Tennessee Supreme Court in *Reid v. State*, No. M2005-01870-SC-S10-PD (Tenn. May 4, 2006). Both the Tennessee Court of Criminal Appeals and the Tennessee Supreme Court denied motions for stay of execution. In its order, the Tennessee Supreme Court specifically noted that, "[d]espite the imminence of the June 28, 2006, execution date, Martiniano and the Post-Conviction Defender did not file the

'next friend' post-conviction petition until nineteen days after this Court's decision [outlined Tennessee's "next friend" procedure]. After dismissal of the petition, a week passed before a notice of appeal was filed."<sup>1</sup> *State v. Paul Dennis Reid, Jr.*, No. M2001-02753-SC-DDT-DD, No. M2006-01294-SC-28S-PD (Tenn. June 26, 2006) (Attachment 2). The court further noted that "Martiniano has an insufficient likelihood of success on the merits of the post-conviction appeal to warrant a stay of execution." *Id.*

At or around 6:00 p.m. on June 26, 2006, Martiniano filed a Consolidated Motion for Stay of Execution, for Appointment of Counsel, and Initial Petition for a Writ of Habeas Corpus by Next Friend on Behalf of Paul Reid (Doc. Entry No. 1-3) and Motion to Proceed in Forma Pauperis. That same night, the district court scheduled a hearing for the following morning, June 27, 2006, at 9:00 a.m. (Doc. Entry No. 7)

At the hearing, Martiniano presented the expert testimony of Dr. George W. Woods, Jr., and other documentary evidence, to demonstrate that Reid lacks the capacity to appreciate his position and make a rational choice with respect to continuing or abandoning further litigation and that he suffers from a mental disease, disorder or defect which may substantially affect his capacity in the premises. *See Rees v. Peyton*, 384 U.S. 312, 314 (1966) (establishing standard of competency in next-friend proceeding).

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<sup>1</sup>Even then, did not seek a stay of execution until several more days. Martiniano actually filed a motion for stay of execution after close of business on Thursday, June 22, 2006, six days before his execution date.

Being in no position (in less than one day) to obtain an independent expert evaluation or to subject petitioner's evidence to meaningful adversarial testing, the State presented no countervailing proof.

At the conclusion of a three-hour hearing, the district court concluded that there was sufficient evidence to raise a reasonable doubt about Reid's competence under this Court's decision in *Kirkpatrick v. Bell*, No. 03-5526, 64 Fed. Appx. 495 (6th Cir. May 5, 2003) (Attachment 3). Although the Court "indicated that it was fully prepared to proceed with the full evidentiary today," the State contended that it was unable to present meaningful proof under the circumstances, since it would require an opportunity to evaluate Reid prior to any such hearing. Given the late filing of the petition, however, the State objected to a stay of execution. Nonetheless, the district court concluded that, under *Kirkpatrick*, a stay of execution "must issue" until such time as "the parties have had a full opportunity to hold a full evidentiary hearing on the issue of Mr. Reid's competency." (Doc. Entry No. 10) Because the district court abused its discretion in granting a stay of execution under the circumstances of this case in the absence of a properly filed federal habeas petition, the State appealed. A notice of appeal is being filed contemporaneously with this motion.

## ARGUMENT

### I. THE DISTRICT COURT ABUSED ITS DISCRETION BY GRANTING A STAY OF EXECUTION IN THIS MATTER.

By granting Reid what amounted to an automatic stay of execution in absence of

evidence clearly showing that the court had jurisdiction to entertain a “next friend” habeas petition under 28 U.S.C. § 2254, the district court abused its discretion. Although Reid’s execution had been scheduled for June 28, 2006, since September 2005, the putative next friend waited until two days (one court day) before the scheduled execution to file a petition on his behalf and a motion for a stay of execution. The district court, however, concluded that it was bound to grant a stay of execution by this court’s unpublished decision in *Kirkpatrick, supra*.

However, the propriety of the court’s decision to grant a stay of execution in this case is resolved, instead, by the recent decision of the United States Supreme Court in *Hill v. McDonough*, \_\_ S.Ct. \_\_, 2006 WL 158470 (June 12, 2006). In *Hill*, the Court reiterated that “a stay of execution is an equitable remedy.” *Id.* at 8. Accordingly, equity must be sensitive to the State’s interest in enforcing its criminal judgments without undue interference from the federal courts.” *Id.* A court considering a stay must apply “a strong presumption against the grant of a stay where a claim could have been brought at such a time as to allow consideration of the merits without requiring the entry of a stay.” *Id.* (quoting *Nelson v. Campbell*, 541 U.S. 637, 650 (2004 ) (quoting *Gomez v. United States Dist. Court for Northern Dist. Calif.*, 503 U.S. 653, 654 (“last-minute nature of an application or an applicant’s attempt at manipulation of the judicial process may be grounds for denial of a stay”))). “The federal courts can and should protect States from dilatory or speculative suits . . . .” *Id.*

Here, rather than consider the equitable principles reinforced in *Hill*, the district court concluded that a stay was required under this Court’s decision in *Kirkpatrick*. In light of *Hill*, however, to the extent the decision in *Kirkpatrick* may be read to require the entry of a stay of execution upon a mere showing of “reasonable doubt” about a petitioner’s competency, particularly where, as in this case, such a claim is made at a time which allows the State just over twelve hours to prepare for an evidentiary proceeding, the decision does not withstand scrutiny. Indeed, the district court emphasized in its decision that *Kirkpatrick* required a full competency hearing — and concomitant stay of execution — on the basis of *any* evidence that would raise a reasonable doubt about Reid’s competence. Thus, far from “protecting states from dilatory or speculative suits” as required by *Hill*, the district court’s reading of *Kirkpatrick* rewards last-minute filings by hamstringing the State into conceding its inability to defend meaningfully against a claim of incompetence at the eleventh hour.

“[O]ne necessary condition for ‘next friend’ standing in federal court is a showing by the proposed ‘next friend’ that the real party in interest is *unable to litigate his own cause* due to mental incapacity, lack of access to court, or other similar disability,” *Whitmore v. Arkansas*, 495 U.S. 149, 164 (1990) (emphasis added), and “[t]he burden is on the ‘next friend’ clearly to establish the propriety of his status and thereby justify the jurisdiction of the court.” *Id.*, 495 U.S. at 165 (1990).

Just three years ago, after an evidentiary hearing, at which Reid himself testified

in response to questions from both the district judge and counsel for petitioner, the district court found Reid competent to waive his appeals.

The Court finds based on the bearing, demeanor and deportment of Reid, and the entire record, that Reid has knowingly, intelligently, voluntarily, and rationally decided to be executed rather than pursue further appeals and post-conviction options.

*Kirkpatrick v. Bell*, No. 3:03-0365, slip op., p. 6 (M.D.Tenn. April 28, 2003) (order denying motion for stay and for appointment of counsel). (Attachment 4) The requisite showing for “next friend” status is not satisfied “where an evidentiary hearing shows that the defendant has given a knowing, intelligent, and voluntary waiver of his right to proceed, and his access to court is otherwise unimpeded.” *Whitmore*, 495 U.S. at 165. “[Reid] was questioned by counsel and the trial court concerning his choice to accept the death sentence, and his answers demonstrate that he appreciated the consequences of that decision.” *Id.* As the district court found,

Reid is aware he will be executed within hours. Reid knows why he is to be executed. Reid understands execution is final and irreversible. Reid knows that he has the option of staying his execution by simply pursuing appeals.

(Attachment 4, p. 7) Reid’s evidence here was not substantially different from that presented in 2003 and certainly not sufficiently more persuasive as to warrant equitable relief under the circumstances of this case.

In order for a federal court to grant a stay of execution on the basis of a motion by a “next friend,” therefore, it must be *clearly shown* that the prisoner does not have

“capacity to appreciate his position and make a rational choice with respect to continuing or abandoning further litigation or . . . suffers from a mental disease, disorder, or defect which may substantially affect his capacity in the premises.” *Rees*, 384 U.S. at 314. In the absence of such a showing, the federal courts lack authority to enter a stay.

The case is largely controlled by the Supreme Court’s decision in *Demosthenes v. Baal*, 495 U.S. 731 (1990), in which the Court vacated a stay granted by the Ninth Circuit Court of Appeals under similar circumstances. There, a state court determination had been made that the prisoner was competent to waive further appeals, and upon the filing of a “next friend” petition, the district court conducted a hearing and denied petitioner’s application for a stay of execution, holding that petitioners had failed to establish that the court had jurisdiction to entertain the petition. The Court of Appeals stayed the execution, concluding that there had been some “minimal showing” of incompetence made, and that the evidence in the record provided an “arguable basis for finding that a full evidentiary hearing on competence should have been held by the district court.” *Id.*, 495 U.S. 733-34. The Supreme Court granted the State’s motion to vacate the stay, ruling that, because the district court had concluded that petitioners had failed to establish that Baal was incompetent, citing *Whitmore*, no basis existed for an exercise of federal jurisdiction to grant a stay of execution.

We realize that last minute petitions from parents of death row inmates may often be viewed sympathetically. But federal courts are authorized by



the federal habeas statutes to interfere with the course of state proceedings only in specified circumstances. Before granting a stay, therefore, federal courts must make certain that an adequate basis exists for the exercise of federal power. In this case, that basis was plainly lacking. The State is entitled to proceed without federal intervention.

*Id.*, 495 U.S. at 737.

The Ninth Circuit’s determination in *Baal* that there was “some minimum showing” of incompetence and an “arguable basis” for a full evidentiary hearing is indistinguishable from the district court’s determination here that there was “sufficient evidence to raise a reasonable doubt” for a full evidentiary hearing on the issue of competency. In neither case had the putative next friend “clearly [ ] establish[ed] the propriety of his status and thereby justif[ied] the jurisdiction of the court” to enter a stay of execution. *Whitmore*, 495 U.S. at 164. The putative next friend filed her motion for a stay four days (two court days) prior to the scheduled execution, and the district court afforded an evidentiary hearing for her to satisfy her burden. The burden was not met, however, and, as a result, an adequate basis for the exercise of power was “plainly lacking.”

In a case such as this one, a federal court must consider both the quality of the evidence presented and the last-minute nature of an application for a stay of execution in deciding whether to grant equitable relief — the *Hill v. McDonough* standard. Here, Ms. Martiniano could have sought “next friend” recognition months ago — it bears emphasis that Reid’s execution was set in September 2005 and he announced his

intention to forego his appeals long before that — thus affording the district court the time necessary to conduct a meaningful competency hearing without need for a stay. Instead, she waited until the eve of execution to come to court and invoked this Court’s decision in the prior *Kirkpatrick/Reid* competency matter to obtain a stay. This sort of blatant manipulation of the judicial process should not be countenanced by this Court. Viewed under the proper standard, the district court’s stay of execution constituted an abuse of discretion and should be vacated.

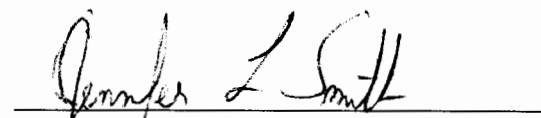
**CONCLUSION**

The judgment of the district court granting the motion for stay should be vacated.

Respectfully submitted,

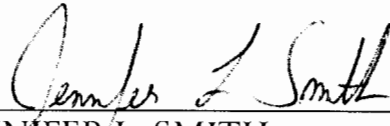
PAUL G. SUMMERS  
Attorney General & Reporter

  
MICHAEL E. MOORE  
Solicitor General

  
JENNIFER L. SMITH  
Associate Deputy Attorney General  
425 Fifth Avenue North  
P.O. Box 20207  
Nashville, Tennessee 37243  
(615) 741-3487

## CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing was served by first class mail, postage prepaid, and by email, to Henry Martin, Office of the Federal Public Defender, 810 Broadway, Suite 200, Nashville, Tennessee, 37203, on this, the 27th day of June, 2006.



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JENNIFER L. SMITH  
Associate Deputy Attorney General

## ATTACHMENT 1

IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE

**STATE OF TENNESSEE V. PAUL DENNIS REID, JR.**

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**No. M2001-02753-SC-DDT-DD - Filed September 26, 2005**

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**ORDER**

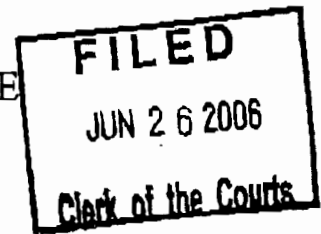
On May 24, 2005, this Court affirmed the two convictions of first degree murder and two sentences of death Paul Dennis Reid received for murders he committed in Montgomery County. Pursuant to Tennessee Code Annotated section 40-30-120(a) (2003), this Court set an execution date of October 5, 2005. Reid has now filed a motion, by and through counsel, requesting a stay of his execution. The State of Tennessee has filed a response in opposition to the request.

Upon consideration of the motion and the State's response thereto, the motion requesting a stay of the October 5, 2005, execution is GRANTED. However, Reid's execution is reset for June 28, 2006. Costs of this motion are assessed to the State of Tennessee.

PER CURIAM

## ATTACHMENT 2

IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE



**STATE OF TENNESSEE v. PAUL DENNIS REID, JR.**

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**No. M2001-02753-SC-DDT-DD**

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**AND**

**PAUL DENNIS REID, JR., by and through LINDA MARTINIANO v.  
STATE OF TENNESSEE**

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**No. M2006-01294-SC-28S-PD**

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**ORDER**

On May 24, 2005, this Court affirmed the two convictions of first degree murder and two sentences of death Paul Dennis Reid, Jr., received for murders he committed in Montgomery County. State v. Reid, 164 S.W.3d 286 (Tenn. 2005). Pursuant to Tennessee Code Annotated section 40-30-120(a) (2003), this Court set an execution date of October 5, 2005. By order filed September 26, 2005, this Court reset the execution for June 28, 2006.

On May 4, 2006, this Court issued an opinion in Daryl Keith Holton v. State and Paul Dennis Reid, Jr. v. State, Nos. M2005-01870-SC-S10-PD, M2005-02398-SC-PD, \_\_\_ S.W.3d \_\_\_, 2003 WL 24314330 (Tenn. May 4, 2006), holding that the trial court lacked authority to consider a petition for post-conviction relief filed by the Post-Conviction Defender on behalf of Reid where the petition was not signed or verified by Reid and where the Defender failed to establish a "next friend" basis upon which to proceed. By order filed June 22, 2006, this Court denied Reid's petition to rehear the opinion.

On May 23, 2006, the Post-Conviction Defender filed a motion for stay of execution and appointment of counsel in connection with a "next friend" petition for post-conviction relief filed on behalf of Reid by his sister, Linda Martiniano, Assistant Post-Conviction Defender Kelly Gleason, and Connie Westfall, an investigator with the Defender's office. On June 13, 2006, the

Montgomery County Circuit Court dismissed the petition and denied the motion for stay of execution and appointment of counsel, finding that the petition and accompanying affidavits failed to make a threshold showing of incompetence under Holton v. State and Reid v. State. A notice of appeal from the trial court's ruling was filed on June 20, 2006. The following day, the trial court denied a subsequent motion filed by the Defender on Reid's behalf, requesting the court to stay the execution pending the appeal of right from the dismissal of the post-conviction petition.

On June 22, 2006, Linda Martiniano, as putative next friend for Reid, filed a motion requesting this Court to stay the execution and requesting an expedited hearing on the matter. The motion asserts that the appeal from the dismissal of the post-conviction petition involves issues of first impression and that a stay of execution is necessary to ensure sufficient time for adequate and reflective briefing. The State of Tennessee has filed a response in opposition to the motion for stay of execution.

Concurrent with the filing of this motion, Martiniano filed in the Court of Criminal Appeals a motion for stay of execution pending the outcome of the appeal in that court from the dismissal of the post-conviction petition. On June 23, 2006, the Court of Criminal Appeals denied the motion for stay of execution. The court concluded that, because the appeal before it is not from the denial of a petition deemed to have been properly filed under the Post-Conviction Procedure Act, the court is without authority to grant a stay of the execution date set by this Court.

Martiniano then filed in this Court a Motion for Review of the Court of Criminal Appeals' denial of stay of execution. The Motion for Review argues that the statute and rules in place for post-conviction petitioners should also apply to petitions filed by a next friend, and that under those rules, the trial court and Court of Criminal Appeals have the authority to issue a stay of execution upon the filing of a post-conviction petition. Martiniano also filed a "Motion to Supplement the Motion for Stay of Execution with an Appendix of Attachments to the Court of Criminal Appeals Stay Motion, which was Attached in Whole as Appendix to Motion for Stay."

The State argues that, because the trial court dismissed the post-conviction petition for failure to satisfy the requirements for next friend status, there is no post-conviction petition pending and, therefore, Martiniano does not have standing to seek a stay of execution. The State next contends that the delay in seeking review of the trial court's order justifies denial of the request for a stay of execution.<sup>1</sup> Finally, the State asserts that the trial court's action in this case is consistent with decisions of this Court and does not justify a stay of execution.

Because an appeal from the dismissal of the post-conviction petition is pending, we decline to conclude that Martiniano lacks standing to seek a stay of execution. While we agree with the

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<sup>1</sup> Despite the imminence of the June 28, 2006, execution date, Martiniano and the Post-Conviction Defender did not file the "next friend" post-conviction petition until nineteen days after this Court's decision in Holton and Reid. After dismissal of the petition, a week passed before a notice of appeal was filed.



State that unnecessary delay has occurred in pursuing this matter, we nevertheless decline to conclude that such delay, standing alone, justifies denial of the request for a stay of execution. Cf. Tenn. Code Ann. 40-30-120(f) (stating that the “court may consider the last-minute nature of an application to stay execution by resolving against the petitioner any doubts and uncertainties as to the sufficiency of the petitioner’s submission”). Recognizing that an appeal in this matter is currently pending in the Court of Criminal Appeals, we note in relation to the merits of the issues raised that we have released today an opinion in Paul Dennis Reid, Jr. v. State, No. M2005-00260-SC-S09-PC (Tenn. June 26, 2006), holding that the standard for mental incompetence adopted in State v. Nix, 40 S.W.3d 459 (Tenn. 2001), applies to a competency determination during post-conviction proceedings. We conclude in this case that Martiniano has an insufficient likelihood of success on the merits of the post-conviction appeal to warrant a stay of execution.

In conclusion, the motion to supplement is GRANTED, the motion for review is GRANTED, and the motion to stay the execution is DENIED.

IT IS SO ORDERED.

PER CURIAM

Justice Adolpho A. Birch Jr. – Concurring in Part/Dissenting in Part

## ATTACHMENT 3

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

LINDA MARTINIANO )  
Next Friend for Paul Dennis Reid )  
 )  
v. ) NO. 3:06-CV-0632  
 ) JUDGE CAMPBELL  
RICKY BELL, Warden ) DEATH PENALTY

ORDER AND STAY OF EXECUTION

Pending before the Court is a Consolidated Motion for Stay of Execution, For Appointment of Counsel, and Initial Petition for A Writ of Habeas Corpus By Next Friend on Behalf of Paul Reid. The Court held a hearing on the Motion on June 27, 2006.

Paul Dennis Reid is scheduled to be executed on June 28, 2006 for the murders of Angela Holmes and Michelle Mace in 1997 in Clarksville, Tennessee. State v. Reid, 164 S.W.3d 286 (Tenn. 2005).

Through the Motion, Mr. Reid's sister, Linda Martiniano, seeks appointment as next friend of Mr. Reid in order to file a habeas corpus petition in this Court on his behalf. The direct appeals in state court of the Clarksville, Tennessee convictions and sentence have been completed. Mr. Reid has not filed a state post conviction petition or a federal habeas corpus petition and has declined to do so. If a petition were filed, Mr. Reid would be entitled to a stay of execution. See McFarland v. Scott, 512 U.S. 849, 114 S.Ct. 2568, 129 L.Ed.2d 666 (1994).

The Supreme Court has held that a "'next friend' may sue in place of a death-sentenced prisoner only when that person clearly shows that the prisoner is not competent." West v. Bell, 242 F.3d 338, 341 (6<sup>th</sup> Cir. 2001)(citing Whitmore v. Arkansas, 495 U.S. 149, 164-66, 110 S.Ct. 1717, 109 L.Ed.2d 135 (1990) and Rees v. Peyton, 384 U.S. 312, 314, 86 S.Ct. 1505, 16 L.Ed.2d 583 (1966)). The "burden is still on the putative 'next friend' to demonstrate, not simply assert,

the incompetence of the prisoner.” West, 242 F.3d at 341. The “Next Friend” must demonstrate, in the words of Rees, that the prisoner does not have the “capacity to appreciate his position and make a rational choice with respect to continuing or abandoning further litigation or ... suffer[s] from a mental disease, disorder, or defect which may substantially affect his capacity in the premises.” Rees, 384 U.S. at 314; West, 242 F.3d 341.

The procedure to follow in making these determinations was set forth by the Sixth Circuit Court of Appeals in a case decided three years ago also involving Mr. Reid, Kirkpatrick v. Bell, 64 Fed. Appx. 495, 2003 WL 21054667 (6<sup>th</sup> Cir. 2003). In Kirkpatrick, the Sixth Circuit explained that the criteria for the court to apply at the preliminary hearing on mental incompetence is to “determine whether there is any evidence that would raise a reasonable doubt about Reid’s competence and entitle him to a full evidentiary hearing on the issue.” 2003 WL 21054667 at \*\*1 (citing Harper v. Parker, 177 F.3d 567, 571 (6<sup>th</sup> Cir. 1999)). As the State in that proceeding had not had an opportunity to evaluate Mr. Reid and all the expert evidence pointed toward the incompetence of Mr. Reid, the Sixth Circuit granted a stay of the execution “until such time as the district court has had an opportunity to conduct a full evidentiary hearing, allowing the State to evaluate Reid and to present evidence concerning his competency.” Id.

At the hearing on the pending Motion, the Movant presented testimony of an expert, Dr. George W. Woods, Jr., and submitted other proof indicating that Mr. Reid does not have the capacity to appreciate his position and make a rational choice with respect to continuing or abandoning further litigation and that he suffers from a mental disease, disorder or defect which may substantially affect his capacity in the premises. The State called no witnesses and offered no countervailing proof, expert or otherwise.

Based on the evidence in the record, the Court found that there was sufficient evidence to raise a reasonable doubt about Mr. Reid's competence, and therefore, under the standard set forth by the Sixth Circuit in Kirkpatrick, the parties are entitled to a full evidentiary hearing on the issue.

Although the Court indicated that it was fully prepared to proceed with the full evidentiary hearing today, the State indicated that it would require an opportunity to evaluate Mr. Reid prior to the hearing, and that such an evaluation could not be completed prior to the scheduled execution. The State argued, however, that the Movant was not entitled to a stay given the late filing of the motion.

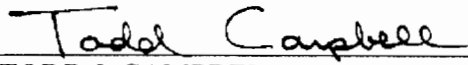
Given that the posture of this matter is now the same as that in Kirkpatrick, the Court must issue a stay of execution until such time as the parties have had an opportunity to hold a full evidentiary hearing on the issue of Mr. Reid's competency. The date of the hearing will be set by separate order.

The Motion for Stay of Execution is GRANTED and the execution is stayed pending a full evidentiary hearing on Reid's competency and pending further order of the Court.

The Motion for Appointment of Counsel is GRANTED and counsel will be appointed by separate order.

The Clerk is directed to transmit a copy of this Order to the Court of Appeals for the Sixth Circuit immediately.

IT IS SO ORDERED.

  
\_\_\_\_\_  
TODD J. CAMPBELL  
UNITED STATES DISTRICT JUDGE

## ATTACHMENT 4

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

JANET KIRKPATRICK )  
Next Friend for Paul D. Reid )  
v. ) NO. 3:03-0365  
RICKY BELL, Warden ) JUDGE CAMPBELL  
DEATH PENALTY

ORDER

Pending before the Court is a Motion for Stay of Execution and the Appointment of Counsel by Next Friend on Behalf of Paul Reid (“Motion”). The Court held a hearing on the Motion on April 28, 2003. For the reasons described herein, the Motion for “Next Friend” status by Janet Kirkpatrick is DENIED; the Motion for Stay of Execution is DENIED; and the Motion for Appointment of Counsel is DENIED.

Paul Dennis Reid (“Reid”) is scheduled to be executed on April 29, 2003, at 1:00 a.m. for the murders of Sarah Jackson and Steve Hampton in 1997 at a Captain D’s restaurant in the Donelson area of Nashville, Tennessee. State v. Reid, 91 S.W.3d 247 (Tenn. 2002). The execution is less than 13 hours away.

I. Procedural History in Federal Court

On Tuesday, April 22, 2003, the Tennessee Supreme Court denied a Motion to Stay Reid’s execution that was filed by Reid’s state attorneys over his objection.

Late Friday, April 25, 2003, Reid’s sister, Janet Kirkpatrick (“Kirkpatrick”) filed the pending Motion for Stay of Execution and the Appointment of Counsel by Next Friend on Behalf of Paul Reid. About an hour later, the Court held a hearing to decide the procedure to be

This document was entered on  
the docket in compliance with  
Rule 58 and/or Rule 79 (a)  
FRCP on 4/28/03 By *af*

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followed in deciding the Motion. The Respondent, Ricky Bell, ("State") asked the Court to have until Monday, April 28, 2003, to file a response to the Motion. At the conclusion of the hearing, the Court ordered as follows:

For the reasons stated from the bench, the following procedures and deadlines shall be followed regarding the pending Motion:

1. Respondent shall have 24 hours – until 5:00 p.m., Saturday, April 26, 2003 – to file an initial written response to the pending Motion;
2. Any mental evaluation of Paul Dennis Reid by Respondent shall take place before 5:00 p.m., Sunday, April 27, 2003;
3. The parties shall file any supplemental pleadings or documents by 5:00 p.m., Sunday, April 27, 2003;
4. The Court will hold a hearing on Monday, April 28, 2003, at 8:00 a.m. Paul Dennis Reid shall be present at the hearing. By contemporaneous Order, the Respondent is ordered to produce Mr. Reid for the hearing;
5. The pending Motion will be decided on the record unless a party files by 5:00, Sunday, April 27, 2003, a written request to present live testimony. In the event live testimony is permitted, the parties shall expect time limitations;
6. Nothing herein shall prevent any party from making an emergency request to the Court prior to the hearing.

On Saturday, April 26, 2003, the State filed a Response in Opposition to the Motion. On Sunday, April 27, 2003, Kirkpatrick filed a Reply to the State's Response. Kirkpatrick also filed the following documents: Notice of Intent to Use Exhibits at Hearing; Supplemental Notice of Intent to Use Exhibits at Hearing; and Notice of Intent to Present Live Testimony and Exhibits.

The State, despite being given the specific opportunity by the Court to have Reid evaluated on Sunday, April 27, 2003, took no steps to do so.



The Court held a 3-1/2 hour hearing on the merits of the Motion on Monday, April 28, 2003, commencing at 8:00 a.m.

## II. "Next Friend" Status

It is undisputed that prior to the hearing Reid both publicly and privately disclaimed and denounced any efforts to stay his execution. Reid has refused a direct appeal to the Supreme Court, a State post-conviction petition and a Federal habeas corpus petition. 28 U.S.C. § 2254.

The case of West v. Bell, 242 F.3d 338 (6<sup>th</sup> Cir. 2001), which originated in this Court, provides helpful context. Federal courts are courts of limited jurisdiction. There is no proceeding before this Court filed by Reid that would permit the entering of a stay of execution. Id. at 340. Reid must invoke the Court's jurisdiction and not simply fail to waive it. There is no "jurisdictional basis" for this Court "to assume control of the state's processes," unless Reid is incompetent. Id. at 343. In the absence of an adequate finding of incompetence, Reid is considered a "responsible human being entitled to enter or stay out of federal court." Id. An "infinite desire to thwart the just processes of the law is not the only sign of mental competence. We must not assume that it is impossible for even a death-sentenced prisoner to recognize the justice of his sentence and to acquiesce in it." Id. This Court is "without the jurisdictional prerequisites necessary" to issue a stay, unless Reid is incompetent. Id.

"Supreme Court case law tells us that a 'next friend' may sue in place of a death-sentenced prisoner only when that person clearly shows that the prisoner is not competent." West, 242 F.3d at 341, citing Whitmore v. Arkansas, 495 U.S. 149, 164-66, 110 S.Ct. 1717, 109 L.Ed.2d 135 (1990) and Rees v. Peyton, 384 U.S. 312, 314, 86 S.Ct. 1505, 16 L.Ed.2d 583 (1966). The "burden is still on the putative 'next friend' to demonstrate, not simply assert, the

incompetence of the prisoner.” West, 242 F.3d at 341. The “Next Friend” must demonstrate, in the words of Rees, that the prisoner does not have “capacity to appreciate his position and make a rational choice with respect to continuing or abandoning further litigation or ... suffer[s] from a mental disease, disorder, or defect which may substantially affect his capacity in the premises.” Rees, 384 U.S. at 314; West, 242 F.3d 341.

The bottom line is this Court does not have jurisdiction to stay the execution of Reid unless Kirkpatrick proves that Reid suffers from a mental disease or defect which: (1) prevents Reid from understanding his legal position and the options available; or (2) prevents him from making a rational choice between his options. Whitmore, 495 U.S. at 166; Rees, 384 U.S. at 314.

### III. Kirkpatrick’s Motion

Kirkpatrick initially argues that as Reid’s sister she is dedicated to his interests and, thus, is an appropriate “Next Friend.” This is uncontested by the State.

Kirkpatrick next argues that Reid is mentally ill and that the mental illness prevents him from making a rational choice between his options of being executed in a few hours and continuing his appeals and living.

Kirkpatrick relies primarily on the reports of three mental health experts who evaluated Reid late last week after the Tennessee Supreme Court declined to issue a stay of execution. The three experts are: Keith Caruso, M.D., Xavier Amador, Ph.D., and James Kyne, Ph.D. Time constraints do not permit a lengthy discussion of those experts’ opinions. But, in summary, the experts opine that Reid is incompetent to waive his appeals due to severe mental disease.

Kirkpatrick also relies, in part, on the opinion of Pamela Auble, Ph.D.; a judicial adjudication of incompetence in 1978; and a 92 page letter written by Reid to state authorities in April, 2003.

#### IV. State's Response

The State contends that a sufficient showing has not been made to warrant conferral of "Next Friend" status on Reid's behalf.

The State relies, in part, on Reid's various letters to State authorities foregoing his appeals; two State Courts having previously found Reid competent in related cases involving murders at McDonalds and Baskin Robbins; and the Tennessee Supreme Court's recent rejection of a stay of execution.

The State stresses that on April 22, 2003, the Tennessee Supreme Court declined to stay Reid's execution. State v. Reid, No. M1999-00803-SC-DOT-DD (Tenn., April 22, 2003). The Tennessee Supreme Court noted that Reid has been twice found competent to stand trial, after lengthy hearings, in two other capital cases as recently as May, 2000. The Tennessee Supreme Court found that Reid has clearly indicated that he has no desire to pursue any post-conviction remedies. Finally, the Tennessee Supreme Court concluded that Reid is a "responsible person" and that no "truly new factual assertions that call into doubt Mr. Reid's present capacity to understand his legal position and options or to make a rational choice among these options" had been presented. Pursuant to Franklin v. Francis, 144 F.3d 429 (6<sup>th</sup> Cir. 1998), the State argues that this Court must defer to the Tennessee Supreme Court's decision that Reid is competent to waive his post-conviction rights and be executed.

The State further argues that the Tennessee Supreme Court properly followed the Rees standard when it concluded that nothing had been presented to call Reid's present competency into question. This determination, according to the State, is neither contrary to, nor involved an unreasonable application of, clearly established Federal law. Therefore, the State contends, this Court is bound by the decision of the Tennessee Supreme Court. 28 U.S.C. § 2254(d). Alternatively, the State argues that Kirkpatrick has not carried her burden of proof to achieve "Next Friend" status. Urgent time constraints do not permit further elaboration on the State's position.

#### V. Hearing

The Court held an evidentiary hearing over the objection of the State. The hearing was held pursuant to the inherent powers of the Court for the reasons stated from the bench.

Reid testified at length in response to questions by the Court and counsel. Also testifying on behalf of Kirkpatrick were Dr. Xavier Amador, Robert Kirkpatrick, the brother-in-law of Reid, and Michael Engle, one of Reid's State attorneys.

The Court finds based on the bearing, demeanor and deportment of Reid, and the entire record, that Reid has knowingly, intelligently, voluntarily, and rationally decided to be executed rather than pursue further appeals and post-conviction options.

The Court finds Reid has a mental illness. Reid, for instance, believes the military causes ringing in his ears for its own purposes. Reid has other unfounded fantasies about military surveillance and other conspiracies. The controlling question, however, is whether Reid's mental problems prevent him from choosing to be executed or pursuing his appeals and living.

Reid is aware he will be executed within hours. Reid knows why he is to be executed. Reid understands execution is final and irreversible. Reid knows that he has the option of staying his execution by simply pursuing appeals. Reid's mental illness is not the proximate cause of Reid's decision to choose execution.

The Court finds that Reid has the present capacity to understand his legal position and options and to make a rational choice among these options and has done so.

The Court further finds that the April 22, 2003, decision of the Tennessee Supreme Court was neither contrary to, nor involved an unreasonable application of, already established Federal law based on the record before the Tennessee Supreme Court at that time. Considering the new facts developed since April 22, 2003, the decision of the Tennessee Supreme Court remains correct.

The parties dispute whether this Court is bound by the decision of the Tennessee Supreme Court. The State relies on Franklin v. Francis, 144 F.3d 429 (6<sup>th</sup> Cir. 1998). Kirkpatrick argues 28 U.S.C. §§ 2254(d) and (e) do not apply to a "Next Friend" petition since it is not a claim for relief. Kirkpatrick, alternatively, argues that Franklin is not procedurally or factually on point with this case. The Court need not resolve this dispute since Kirkpatrick has failed to carry her burden even if the Court is not bound by the decision of the Tennessee Supreme Court.

#### VI. Conclusion

For the reasons described above, the Motion for "Next Friend" status by Janet Kirkpatrick is DENIED; the Motion for Stay of Execution is DENIED; and the Motion for Appointment of Counsel is DENIED.

The Clerk is directed to transmit a copy of this Order to the Court of Appeals for the Sixth Circuit immediately.

IT IS SO ORDERED.

  
TODD J. CAMPBELL  
UNITED STATES DISTRICT JUDGE