IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

PAUL DENNIS REID, JR.,	)	
by and through Linda Martiniano,	)	**CCA NO. M2006-01294-CCA-R3-PC**
	)	
	)	**Montgomery County Circuit Court**
	)	**Trial Court No. 38887**
Petitioner,	)	
	)	
	)	**Death Penalty Post-Conviction**
	)	**EXECUTION DATE: June 28, 2006**
STATE OF TENNESSEE,	)	
	)	
Respondent.	)	

RENEWED MOTION FOR STAY OF EXECUTION PENDING T.R.A.P. 3 APPEAL OF RIGHT OF DISMISSAL OF POST-CONVICTION PETITION, AND EXPEDITED APPEAL

EXPEDITED HEARING REQUESTED

Pursuant to the Rules of the Tennessee Supreme Court, Rule 28, Section 10(C), Linda Martiniano, next friend for Paul Dennis Reid, Jr., renews her motion for this Court to stay Mr. Reid's execution, schedule full briefing and argument on this T.R.A.P. 3 appeal of right[1], and reverse the lower court's ruling dismissing the filed post-conviction petition. An expedited hearing on this matter is requested.

In support of this motion, the next friend herein incorporates all previous pleadings in this Court under this case number.

This Court has jurisdiction to enter a stay pending the appeal of right, as the Tennessee Supreme Court made clear in an Order issued today. This Court previously

[1] Pursuant to Tenn. Sup. Ct. R 28, Section 10, dismissal of a petition is covered under T.R.A.P. 3(b) as an appeal of right. *See, e.g., State v. Nix*, 40 S.W.3d 459 (Tenn. 2001), wherein petitions filed by next friend were dismissed as late-filed and appeal was taken to this Court. This Court found insufficient allegations in the petitions to satisfy a *prima facie* showing of incompetency and the Supreme Court affirmed. *See also Seals v. State*, 23 S.W.3d 272 (Tenn. 2000), involving the appeal of dismissal of a post-conviction petition filed by next friend.

denied the Motion for Stay filed on June 22, 2006, stating that "this Court is without authority to grant a stay of the execution date set by the supreme court." Order, June 23, 2006.

This afternoon, June 26, 2006, the Tennessee Supreme Court denied the next friend's motion for a stay of execution filed in that Court on June 22, 2006. *See* attached Order in No. M2001-02753-SC-DDT-DD and No. M2006-01294-SC-28S-PD. The Supreme Court recognized that "an appeal in this matter is currently pending in the Court of Criminal Appeals." Further, the Supreme Court noted that an opinion, also issued today, in *Paul Dennis Reid, Jr. v. State*, No. M2005-00260-SC-S09-PD (Tenn. June 26, 2006) holds that the standard for mental incompetence adopted in *State v. Nix*, 40 S.W.3 459 (Tenn. 2001) applies in post-conviction proceedings.

Mr. Reid is a severely psychotic man, with a chronic, degenerative disease which has caused a deteriorating mental state, and the courts of the State of Tennessee have not conducted a hearing on his current competency since April 2000. The State concedes that Mr. Reid has a mental illness that results in persistent delusions about government controlling his life and the legal process. Given that the State agrees that his psychotic illness affects these aspects of his legal and personal affairs, that alone should establish a sufficient *prima facie* case to justify a competency inquiry. Nonetheless, the next friend proffered a tremendous amount of proof that far exceed a *prima facie* showing.

The Circuit Court abused its discretion by finding Appellant had not made a *prima facie* case that Mr. Reid is incompetent under the *Nix* standard. This Court reviews a motion for stay of execution under these circumstances under the "abuse of discretion"

standard, *see* Tenn. Sct. R. 28, Section 10(c). It is an abuse of discretion to kill a brain-damaged, psychotic man while an appeal regarding his competency is pending.

On the merits of the appeal[2], this Court must consider de novo the overwhelming *prima facie* case made before the Circuit Court that Mr. Reid is incompetent under the *Nix* standard due to the failure of that Court to conduct an evidentiary hearing.[3] The Court's standard of review on whether the next friend established a *prima facie* case is de novo, since the lower court conducted no evidentiary hearing. *See, e.g., Thompson v. State*, 134 S.W.3d 168, 177 (Tenn. 2004):

> [T]his Court will review de novo the trial court's determination that Thompson failed to establish a genuine issue regarding his present competency. The trial court's decision at the threshold showing stage generally involves no factual determinations entitled to deferential review. Unlike Coe, the trial court in this case did not observe witnesses and make credibility determinations. Indeed, the trial court in this case reviewed affidavits and other written submissions before determining that Thompson had failed to establish a genuine issue as to his present competency to be executed. Therefore, much like the standard of review applied when reviewing a lower court decision granting summary judgment, the appropriate standard of review in this case is de novo, with no presumption of correctness afforded the trial court's decision.

BRIEF SUMMARY OF THE *PRIMA FACIE* OF INCOMPETENCE UNDER *NIX*

- Dr. Woods, who the Court found to have "impressive credentials" tendered an affidavit regarding Mr. Reid's current mental state, which results from a left t emporal lobe dysfunction, a neurological disorder which has produced in Mr.

[2] The majority of the Supreme Court in today's Order denying the stay of execution in that Court failed to conduct any inquiry into the merits of the *prima facie* case. Justice Birch, in dissent, addressed the merits and found them "arguably sufficient to meet the *prima facie* standard of incompetency adopted by the majority decision today in *Paul Dennis Reid, Jr. v. State*, No. M2005-00260-SC-S09-PC (Tenn. June 26, 2006).

[3] This ruling, and the failure to extend the same protections to Mr. Reid, at the initiation stage of proceedings, as it the dismissal stage, violated Mr. Reid's rights to due process, access to the courts, equal protection, and protection from cruel and unusual treatment under the state and federal constitutions. Amendments 1, 5, 6, 8, and 14, U.S. Constitution; Article I, § 8, 9, 16, 17 ("[A]ll courts shall be open and every man, for an injury done him shall have remedy by due course of law."), Tennessee Constitution. *See, e.g., John L. v. Adams*, 969 F.2d 228 (6th Cir. 1992); *Evitts v. Lucey*, 469 U.S. 387, 396, 105 S.Ct. 830, 836, 83 L.Ed.2d 821 (1985); *Halbert v. Michigan*, 545 U.S. ___, 125 S.Ct. 2582, 2586, 162 L.Ed.2d 552 (2005).

Reid a chronic, schizophrenia-like psychosis which has severely impaired his ability to weigh, deliberate, inform and cooperate.

- Dr. Woods opined that Mr. Reid is presently incompetent, either under *Rees v. Peyton*, 384 U.S. 312, 314, 86 S.Ct. 1505, 1506, 16 L.Ed.2d 583 (1966) or *State v. Nix*, 40 S.W.3d 459 (Tenn. 2001).

- Mr. Reid's delusion, that he has been under the control of a government-directed surveillance and influence, impels, invades, and guides his daily activities as well as decision-making processes.

  - Mr. Reid currently has persecutory, paranoid delusions that "the military government" is using "scientific technology" to torture him.

  - Mr. Reid sees execution as the only means of ending the torment due to failed promises in the past that the "scientific technology" will be "turned off."

  - Mr. Reid currently is suffering from perceptual and memory impairments which render him unable to reliably relate events of his trial.

  - Mr. Reid's delusional beliefs that current counsel are members of the conspiracy against him preclude rational communication regarding his legal options and thus he is unable to perceive and understand his legal right and liabilities in any meaningful sense.

  - Mr. Reid's beliefs that scientific technology is employed in a continuous basis upon his mind and person also interfere with his ability to manage his personal affairs. For example, he believes that scientific technology controls and "coaches" correctional officers, other inmates, and literally everyone with whom he comes into contact.

  - Mr. Reid believes that the military government controls his ability to receive mail, receive gifts from others, and obtain items from the commissary.

  - Mr. Reid experiences certain events as "repeats" which have occurred previously when they have not.[4]

Kelly A. Gleason (attorney in Reid's Davidson County post-conviction and appeal)

- Gleason's affidavit is forty-two pages and in detail describes her observations and interactions with Mr. Reid in person and by telephone by date.

- During the entire time Gleason has represented Reid, his delusional beliefs have been persistent and have pervaded his thinking about all aspects of his life.

[4] How can one manage personal affairs without the ability to accurately remember what has and has not occurred on a day to day basis?

- Reid's delusional beliefs have caused him to either refuse to discuss legal issues with Gleason, as he believes it is futile, or to discuss only the specific delusional beliefs he holds about his trial attorneys, the trial judges, the jurors, witnesses, courtroom personnel, state and federal appellate courts, the media, the governor, the president, congress, Department of Correction personnel – literally everyone.

- Reid told Gleason that he knew she was working with the military government and that he could not believe a single word she said or anything she wrote.

- Reid refused to make a list of what he felt that his trial attorneys did wrong or did not do since he felt there was no point because the trial attorneys and everyone at the trial was coached.

- Reid said he had been framed and that he couldn't have done this crime because he was aware that the military intelligence was always taping him and watching his every move. Reid would not have committed the crimes since he knew that he would be taped if he did so and the military intelligence could use the tapes to prove it.

- Reid believes the military intelligence is causing ringing in his ears and prickly sensations on his skin.

- Reid believes he met Gleason a year before they actually met.

- Reid stated that Gleason is not a lawyer and asserted that had no way of knowing if she was since everything is controlled by the government military.

- Reid has heart pains, and pains in his left arm, but refuses to call the doctor, since he believes the pain is the product of the "scientific technology people."

- Reid believes the "military government" plants recurring dreams in his mind of his father and sister Janet being killed. He believes the military government killed his father, who died of cancer in 1997, with scientific technology.

- Reid believes that people speak to him in "cryptic language" which is intended for him to hear.

- When meeting with counsel, Reid has brought papers with him on which he had written "REPEAT" and another with "BE CIRCUMSPECT, ATTORNEY'S ARE COACHED TO REPEAT." He stated that this was a reminder to himself not to go into "irrelevant" matters such as his trial.

- Reid stated that the scientific technology runs the internet letter through his head constantly; he hears it read to him. They will not let him sleep; they cause terrible ringing in his ears.

- Reid described how scientific technology can radiate his body and then use some kind of magnetic tapes to record the activity going on in his brain.

- Reid told Gleason that if Gleason would ask whoever coaches her, tells her what to say and do and to repeat herself, that would provide a lead and draw Gleason back "to a nucleus, to a core, to a hub of people" that are using scientific technology against Reid.

- Reid said "they" coached Judge Blackburn what to say during the trial and Reid knows that because there's no way that Judge Blackburn could have known to repeat what he said from 1985 to 1990 at Ellis II under his breath unless they told her.

- Reid said that [prosecutor] Tom Thurman said things during the trial which there was no way he could have known to say unless coached by scientific technology.

- Reid said Judge Gasaway could see that episode with the jurors and that Judge Gasaway was coached to say things that no one else would have known he was saying except Paul Reid.

- Reid said he no longer feels he needs to talk to Americans since they've been coached to play mind games on him. "They" coach inmates, guards, and staff what to do and say around him. "They" reduced the guards to act like juveniles.

- Reid said that scientific technology had transferred David Baker to the federal defender's office and that his legal teams have all been coached to do nothing for him.

- Reid said that "they" wake him up in the morning unnaturally, energy pumping through him, instead of coming slowly awake and stretching.

- Reid asked Gleason if she had been taken somewhere and shown the machines or devices and how knobs or switches are turned to keep him under scientific technology. Reid said he believes there is a panel board and computers and other equipment somewhere.

- Reid told Gleason that he did not believe a hearing was conducted on his case in Davidson County on January 17, 2005. He said because he didn't see the judge and the prosecutor, he would not accept that what Gleason said happened was true.

- Reid said that on January 17, 2005, Gleason and Hare left the office, got in a car, went to the courthouse, saw Reid in the holding tank, and went back to the office. Paul said that later Gleason returned alone and it was a total hoax, no hearing was conducted, and it was a "premeditated repeat."

- Reid said legal issues are a waste of his time since everything is controlled by the military government.

- Reid said every word of his is recorded and the scientific technology people can see what he can see -- that's how they get people to repeat actions.

- Reid told Gleason that he was at the center of the greatest military conspiracy of all time, a multi-billion dollar project.

- Reid asked Gleason to find a way to show on a tv screen a diagram of the brain and how scientific technology can erase memory, cause amnesia, deprive sleep, implode organs, and record eyesight.

- Reid demanded that Gleason tell him what scientific technology had coached her to repeat to him. When Gleason explained that she did not know, Reid said he didn't believe a word she said anyway.

- Reid said scientific technology makes his mind foggy, puts orange taste in his mouth, and "pops his anal" to let him know that he's at the "asshole end" of scientific technology.

- Reid told Gleason that scientific technology has tried to talk to him through the tv but he avoids talking about the tv. They count the number of times he wipes his "anal."

- Reid said the military government would kill Connie Westfall and Kelly Gleason if they were perceived as a threat to the military government.

- On July 22, 2005, Reid told Gleason that he wanted her to represent him in the Clarksville case, if anyone was going to. Gleason gave Reid a draft motion for appointment and explained the mechanism for filing a post-conviction petition. Reid claimed he would read them over later.

- Reid told Gleason that he got word that in April of 1987 "they" were going to turn off scientific technology but they reneged. Reid realized this when he woke up to find orange seeds in his navel.

- Reid told Gleason that Judge Campbell used "body language" at the federal hearing in April 2003 to send Reid messages. Reid said he was coached to do so and [prosecutor] Kathy Morante used body language as well, to say it wasn't real, and not to panic.

- Reid told Gleason that she had threatened to take his tv away from him if he wouldn't answer her questions. He recounted to her an incident which never happened.

- Reid said that attorney Mark Olive had promised in April 29, 2003 to shut off the scientific technology, find the real killers, and give him his promised money. Reid thought federal court was the "real deal" and this would happen.

- Reid told Gleason about how much he enjoyed living until 1985 and now what they do to his ears, mind, and body is unbearable.

- Reid told Gleason that God has given him supernatural powers to resist scientific technology. Reid said he has reduced scientific technology to a follower and "taken human beings out of the equation." Reid said he realized that the only way scientific technology can influence him is through human beings, so he has shut them out.

- Reid told Gleason that Pam Auble and Judge Cheryl Blackburn had notes from scientific technology during his trial. Reid said they were "working in conjunction" and the theme was to get the whole story out. He said that Chris Clark and Jennifer Krause told all about it in their reports. Reid said scientific technology had them run the story.

- Reid told Gleason that scientific technology coached his attorneys to work with the District Attorney and put him in the penitentiary. Reid said he should never have been indicted, he'd been set up from the beginning. Reid then recounted scientific technology's efforts to kill him.

- When Gleason informed Mr. Reid of the Tennessee Supreme Court's opinion of May 4, 2006 and the factual errors therein, Reid asked Gleason if the scientific technology told the Tennessee Supreme Court to mess everything up so that they would get more time to torment Paul, because the Sixth Circuit or some other court would believe they needed to fix the Tennessee Supreme Court's errors.

AFFIDAVIT OF CONNIE WESTFALL (investigator)

- Westfall observed that the isolation to which Mr. Reid is subjected at Brushy Mountain State Prison has contributed to the deterioration of his tenuous and fragile mental state.

- On October 12, 2004, Westfall and Nick Hare and visited Reid at Brushy. When Hare asked Reid to explain to him what he wanted him to do as his attorney, Reid said there was nothing he could do as he was controlled by the government military and if he could do anything, the only thing he wanted was for Hare to get the scientific technology turned off.

- On January 18, 2005, Westfall visited with Reid alone at Riverbend. Reid was transported to Nashville for a hearing held in Judge Blackburn's court the day before. However, Reid said many times during the visit that the court hearing and all that was said was a "repeat" from last year; in addition, each thing Reid and Westfall discussed on January 18 was a "repeat" from before with the exception of the last minute arrangement to keep him at Riverbend for two more weeks.

- Reid told Westfall that at the hearing, everyone at the courthouse "repeated exactly what they have said before," including the bailiff and court officers. Reid said "It's all a big sham, even the weather is identical!"

- Reid told Westfall that there was no hearing on January 17 and Rosalie Kraft, a legal secretary, and Westfall were not in the courtroom; further, Gleason and Hare were in their offices, drove to the courthouse to meet with him then drove back; later in the day Gleason alone drove back to the courthouse to meet with Reid.

- Reid told Westfall that items have been removed from his cell at the direction of the government military. He said the scientific technology "radiates" his brain making his thinking "fuzzy and foggy," he becomes "confused" and can't "think vividly clear." Reid said they interfere with his sleep, ring his ears and "flicker' his body. He said every moment of his life is recorded.

- Reid told Westfall that they repeatedly run the same dreams through his head. Reid said inmates and guards repeat the exact words and actions as the year before -- they scratch their heads in the same manner and use their eyes in the same manner.

- Reid told Westfall that the government military has unlimited resources and power, and use these powers to send cryptic messages to him, such as causing an airplane to crash on his birthday, blowing up the Challenger space craft over his home state of Texas. Reid said they caused both Presidents Bush to choke; they intended for Reid to be at Oklahoma's Murrah Federal Building when it was bombed; they caused JFK Jr. to black out and crash his plane.

- Reid told Westfall that the way she was sitting, with her right fist on her right cheek, was a repeat. He said she would not know to do it again unless she was coached to do it by the government military scientific technology. He went on to say, "Common sense says if you can repeat the exact actions, you have to be coached." Reid said that when Westfall and Gleason talk about him at the office or anywhere else, "they" listen to Westfall and Gleason just like they do his family and anyone else who comes into contact with him.

- Reid told Westfall that he does not believe anything from any outside influence, not Kelly Gleason, not Westfall, not any other lawyer, not his family … not anyone but himself.

- Reid became upset with Westfall and Gleason because of his belief that they won't be honest with him about the scientific technology. Reid said his father [now deceased] told him the truth about seeing the videos and talking to the "scientific technology people." With this "proof" Reid can't understand why Westfall and Gleason won't tell him that they have meetings with "them" and are coached what to say and do around him.

- Westfall noted that "Reid has never been able to discuss his case(s) in a meaningful way with his attorneys in my presence. From my lay perspective, he has descended completely into his delusion; he has no reference point he can trust or rely on, he has only himself in which to believe."

AFFIDAVIT OF LINDA MARTINIANO

- Mrs. Martiniano is Paul Reid's sister. She resides in Texas but visits her brother annually and receives regular letters.

- Based upon her visits with Reid, the letters she has received from him, and her knowledge of her brother, Mrs. Martiniano believes that Paul Reid is severely mentally ill. She said he does not think or act in a rational manner.

- Mrs. Martiniano said that "everything he does is guided by his belief in a government conspiracy against him to bombard him with 'scientific technology.'" When Reid has talked to her about giving up appeals and being executed, he talks about ending the torture of the scientific technology.

- Mrs. Martiniano believes her brother is not capable of making a rational decision and has asked the Office of the Post-Conviction Defender and attorneys in that office to represent her so that she may act in the place of her brother to protect his interests.

- Mrs. Martiniano loves her brother and does not wish for him to be executed or abandon his appeals unless and until he can make that decision as a competent person and not as a product of his severe mental illness.

AFFIDAVIT OF JAMES A. SIMMONS

- Mr. Simmons is an attorney who represents Mr. Reid on direct appeal currently and represented him in the direct appeal of the Montgomery County convictions and sentences. He has represented Mr. Reid for several years during these appeals.

- Mr. Simmons has practiced law for twenty-three years, and represented scores of capital defendants in state and federal court at trial, appeal, and upon post-conviction.

- Mr. Simmons has met with Mr. Reid on several occasions and attempted to discuss his legal affairs. During the entire time he has represented Mr. Reid, he has never been able to have a rational conversation with him about his cases. Reid will not even engage in discussions about his cases.

- Mr. Simmons reports that Mr. Reid's primary interest has been in discussing his sincere delusional belief that everything he says and does is recorded by the military government and that they are torturing him with "scientific technology." Simmons states that Mr. Reid also believes that everyone in his life, Simmons included, is "coached" regarding what to do or say by this nonexistent entity.

- Simmons states that he believes, based on his personal interactions with Mr. Reid and the letters Reid writes to him, that Reid is currently "completely out of touch with reality." Simmons notes that over the years, he has watched Reid's mental condition, "which was always very bad, deteriorate."

- Simmons states he "does not believe [Reid] can make rational decisions about his legal options. I do not believe he can make his own medical decisions, because he is not even aware that he is severely mentally ill."

- Simmons states that if he had not been assured that Gleason and Hare were in contact with Mr. Reid's family and willing to assist them with a next friend action, he would have contacted the family and assisted them in filing such an action.

SUFFICIENT INFORMATION WAS PROFERRED TO ESTABLISH A GENUINE ISSUE OF INCOMPETENCY

When a defendant's competency has been in doubt in the past, and present information indicates a genuine issue as to present competency, due process requires that a competency hearing be conducted. The information before the Montgomery County Circuit Court was more than enough to justify further inquiry. *See, e.g., Cogburn v. State*, 281 S.W.2d 38, 39-30 (Tenn. 1955) (a court must initiate an investigation into competency if it "has facts brought to its attention which raise a doubt of the then sanity of the accused"); *State v. Taylor*, 771 S.W.2d 387 (Tenn. 1989) (citing *Drope v.*

Missouri, 420 U.S. 162, 95 S.Ct. 896, 908, 43 L.Ed.2d 103 (1975)) ("irrational behavior," demeanor, and "any prior medical opinion are all relevant" to present competency); *Bishop v. Superior Court*, 724 P.2d 23, 27-28 (Ariz. 1986) ("It is counsel who spends time with a defendant in a manner which allows observation of the facts necessary to determine the issues to be decided at the competency hearing. Unlike any of the adversarial issues, on the question of competency to comprehend the proceedings and assist the attorney, the defense lawyer is often the most cogent witness."); *Wilcoxson v. State*, 22 S.W.3d 289, 310-311 (Tenn. Crim. App. 1999) (counsel ineffective for failing to raise client's competency as an issue when client had previously been diagnosed with schizophrenia and bipolar disorder, had previously taken antipsychotic medication, and claimed powers of mind control); *People v. Stankewitz*, 648 P.2d 578 (Cal. 1982) (competency hearing should have been conducted where defense counsel voiced doubts about defendant's competency and a psychiatrist testified that defendant's delusional and paranoid thoughts prevented him from cooperating in the conduct of his defense); *Lafferty v. Cook*, 949 F.2d 1546 (10th Cir. 1991) (defendant with a factual understanding of the proceedings against him was incompetent as he lacked a rational understanding of the proceedings because of his paranoid delusional system); *Pate v. Smith*, 637 F.2d 1068 (6th Cir. 1981) (Petitioner was entitled to a competency hearing once the state trial court entertained doubts about his competency.); *Harper v. Parker*, 177 F.3d 567 (6th Cir. 1999) (State-provided collateral counsel properly represented the petitioner because once petitioner's competency was put in question, he could not waive his right to have his competence determined, and state-provided counsel were necessary to complete judicial review of issue; district court properly held a preliminary hearing to determine whether

there was sufficient evidence of incompetency to require a full evidentiary hearing.); *Drope v. Missouri*, 420 U.S. 162, 95 S.Ct. 896, 908, 43 L.Ed.2d 103 (1975) (competency hearing should have been conducted in light of petitioner's suicide attempt combined with his history of bizarre behavior and diagnosis of "borderline mental deficiency" and "chronic anxiety reaction with depression").

FAILURE TO GRANT A STAY WOULD VIOLATE MR. REID'S RIGHTS TO DUE PROCESS, EQUAL PROTECTION AND FREEDOM FROM CRUEL AND UNUSUAL TREATMENT

It is clear that if Reid had filed a signed post-conviction petition which the trial court dismissed, a stay would be entered while he pursued an appeal of right. T.R.A.P. 3(b); Tenn. Sup. Ct. R. 28, Sec. 10(A) ("An appeal from the dismissal or denial of a post-conviction petition shall be in accordance with the Tennessee Rules of Appellate Procedure."); Tenn. Code Ann. §40-30-116 ("The Order granting or denying relief under the provisions of this part shall be deemed a final judgment, and an appeal may be taken to the court of criminal appeals in the manner prescribed by the Tennessee Rules of Appellate Procedure.); Tenn. Code Ann. §40-30-120(a)("Upon the filing of a petition for post-conviction relief, the court in which conviction occurred shall issue a stay of execution date which shall continue in effect for the duration of any appeals or until the post-conviction action is otherwise final.")

Further, it is clear that if Mr. Reid chose to dismiss a pending post-conviction petition and was competent to do so, a stay would be granted until his appeals were completed. *See* Tenn. Sup. Ct. R 28, Section 11(c):

> Whenever a trial court determines that the petitioner is competent to withdraw the petition, the order of the trial court finding the petitioner competent and dismissing the petition may be appealed under T.R.A.P. 3. If the trial court has granted a motion for dismissal of post-conviction

> counsel; post-conviction counsel shall nonetheless have standing to appeal the sole question of whether the petitioner was competent to withdraw the petition. The issue of competency will be reviewed as an issue of fact and the trial court's finding will be presumed correct, unless the evidence in the record preponderates against it.

Further, it is clear that if Mr. Reid were under a sentence of life without parole, life, or a term of years, his next friend would be able to appeal the finding of an insufficient *prima facie* case to warrant a next friend post-conviction petition. *See State v. Nix*, 40 S.W.3d 459 (Tenn. 2001), wherein petitions filed by next friend were dismissed as late-filed and appeal was taken to this Court. This Court found insufficient allegations in the petitions to satisfy a *prima facie* showing of incompetency and the Supreme Court affirmed. *See also Seals v. State*, 23 S.W.3d 272 (Tenn. 2000), involving the appeal of dismissal of a post-conviction petition filed by next friend. Following remand for further proceedings in *Seals I*, the post-conviction court found an insufficient *prima facie* showing under *Nix*. *See Seals v. State*, No. E2001-01756-CCA-R3-PC (Tenn. Crim. App. 2002) (Not for Publication), perm. to appeal denied, Nov. 4, 2002, 2002 WL 1482772 at p. 2 (a copy was provided in the revious motion for a stay). This Court affirmed the lower court upon a T.R.A.P. 3 appeal.

Failure to extend the same protections to Mr. Reid, at the initiation stage of proceedings, violates Mr. Reid's rights to due process, access to the courts, equal protection, and protection from cruel and unusual treatment under the state and federal constitutions. Amendments 1, 5, 6, 8, and 14, U.S. Constitution; Article I, § 8, 9, 16, 17 ("[A]ll courts shall be open and every man, for an injury done him shall have remedy by due course of law."), Tennessee Constitution. *See, e.g., John L. v. Adams*, 969 F.2d 228 (6th Cir. 1992); *Evitts v. Lucey*, 469 U.S. 387, 396, 105 S.Ct. 830, 836, 83 L.Ed.2d 821

(1985); *Halbert v. Michigan*, 545 U.S. ___, 125 S.Ct. 2582, 2586, 162 L.Ed.2d 552 (2005).

APPELLANT'S DILIGENCE IN THE FACE OF QUICKLY EVOLVING LAWS AND NEW PROCEDURES

Undersigned counsel first raised objections to executing Mr. Reid in this matter while the Davidson County competency case, Case No. M2005-00260-SC-S09-PC, was pending in the Tennessee Supreme Court, through a Motion for Stay of Execution, for the execution set on October 5, 2006, filed nearly a month before, on September 9, 2005. The State contested the motion, arguing that the Supreme Court did not have jurisdiction to enter a stay and that the Montgomery County Circuit Court was the only court with jurisdiction. Further the State urged the Court to wait until the U.S. Supreme Court's expected October 3, 2005, ruling on a pending motion to proceed without affidavit of indigency on a petition for writ of certiorari on this Court's direct appeal opinion. The State asserted this time frame provided this Court with "ample opportunity" to "determine whether to reset Reid's execution" which was scheduled less than 48 hours from that time. The Tennessee Supreme Court entered an Order on September 26, 2005, resetting Mr. Reid's execution for June 28, 2006.

Counsel also filed, as Mr. Reid's *de facto* guardian, a post-conviction petition on his behalf on September 23, 2005 which resulted in a State Rule 10 appeal which the Supreme Court heard on February 2, 2006.[5] The Supreme Court's ground-breaking

[5] Among the State's arguments to the Montgomery County Circuit Court at a hearing on September 29, 2005, was that the petition was premature. Now the State complains that the timely next friend post-conviction petition, which only was available as an option under Tennessee law after the Tennessee Court's ruling in *Holton/Reid* May 4, 2006 (final as of June 22, 2006), was dilatory. The State is estopped from this argument given that party's previous urgings in the Circuit Court to dismiss a petition, claiming it could be filed later, and, in this Court, to delay consideration of the stay until the last minute. Appellant has acted as expeditiously as possible under these unprecedented conditions.

opinion in *Holton v. State* and *Reid v. State*, ___ S.W.3d ___, Tenn. Sup. Ct. No. M2005-01870-SC-S10-PD and No. M2005-02398-SC-S10-PR (May 4, 2006) was issued on May 4, 2006 and became final on June 22, 2006 upon denial of the petition to rehear.[6]

RELIEF REQUESTED

WHEREFORE, this Court should enter a stay of execution so that the right to appeal the dismissal of this post-conviction petition by the court below may be vindicated.

Respectfully submitted,

_____
Kelly A. Gleason
Assistant Post-Conviction Defender

_____
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[6] The primary basis for the petition to rehear was a request that this Court address any potential confusion as to whether the next friend competency standard was found in *Rees v. Peyton*, 384 U.S. 312, 314, 86 S.Ct. 1505, 1506, 16 L.Ed.2d 583 (1966) and *Whitmore v. Arkansas*, 495 U.S. 149, 162 (1990) or in *State v. Nix*, 40 S.W.3d 459 (Tenn. 2001). The Tennessee Supreme Court only answered this question definitively today in its opinion in the Davidson County competency case, *supra*.

STATE OF TENNESSEE)
) ss
COUNTY OF DAVIDSON)

AFFIDAVIT

I, Kelly A. Gleason, after having been duly sworn, aver and say as follows:

1. All of the factual assertions contained in this Motion are true and correct to the best of my knowledge and belief.

FURTHER THE AFFIANT SAITH NOT.

_____
Kelly A. Gleason, Affiant

Sworn to and subscribed before me on this the _____ day of June, 2006.

My Commission Expires: _____

_____
NOTARY PUBLIC

C**ERTIFICATE OF SERVICE**

I hereby certify that a true and exact copy of this Motion was delivered by facsimile and email to Jennifer L. Smith, Associate Deputy Attorney General, Criminal Justice Division, P.O. Box 20207, Nashville, TN 37202-0207 on this the _____ day of June, 2006.

_____
Kelly A. Gleason