

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, TENNESSEE

PAUL DENNIS REID, JR.,)	
by and through Linda Martiniano,)	Trial Court No. 38887
)	
)	
Petitioner,)	
)	Post-Conviction No. _____
)	Death Penalty Post-Conviction
)	EXECUTION DATE: June 28, 2006
STATE OF TENNESSEE,)	
)	
Respondent.)	

MOTION FOR STAY OF EXECUTION PENDING TRAP 3 APPEAL OF RIGHT OF DISMISSAL OF POST-CONVICTION PETITION

EXPEDITED HEARING REQUESTED

Linda Martiniano, proffered next friend for Paul Dennis Reid, Jr., respectfully moves this Court to grant a stay of execution pending an appeal of right of this Court's June 13, 2006, Order dismissing this post-conviction petition. 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."). Ms. Martiniano as next friend plans to exercise this right of appeal; however, Mr. Reid is currently scheduled for execution on June 28, 2006, prior to the exhaustion of the time frame for filing a notice of appeal to initiate that process. Moreover, with less than two weeks until Mr. Reid's execution there is insufficient time for adequate and reflective briefing and review of the serious issues of first impression raised in this matter, which involve the appropriate standards for permitting a next friend to initiate post-conviction for a death sentenced inmate whom the State and Court agree suffers from a serious mental disease or defect.

A stay of execution is necessary in order to effectuate 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).

An expedited hearing on this Motion is requested.

In support of this Motion, the following is asserted:

PROCEDURAL HISTORY

1. This matter arises from the diligent, timely efforts of the next friend and undersigned counsel to alert this Court to serious questions regarding Mr. Reid's present incompetency. In brief summary of the history which is set out below, the Supreme Court affirmed Mr. Reid's convictions and death sentences in this case on May 24, 2005. On June 27, 2005, the Supreme Court granted an interlocutory appeal, which is pending, to decide issues related to Reid's competency in a related Davidson County post-conviction case. On September 23, 2005 undersigned counsel filed a post-conviction petition on Mr. Reid's behalf, raising concerns about Mr. Reid's incompetency. The Tennessee Supreme Court on May 4, 2006 vacated Orders entered by this Court on September 29, 2005 related to that initial action. The next friend filed a timely post-conviction petition on behalf of her brother on May 23, 2006. This Court by Order entered June 13, 2006 dismissed this post-conviction petition.

2. In that Order, this Court found that Ms. Martiniano has standing to serve as a next friend for her brother, Mr. Reid, as she meets the requirements of *Whitmore v. Arkansas*, 495 U.S. 149, 162 (1990) and *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 (filed May 4, 2006 at Nashville) (petition to rehear pending). *See* Order of June 13, 2006, p. 5. This matter came before the Court upon a post-conviction petition filed by next friend Linda Martiniano on May 23, 2006, along with a motion for a stay of execution and appointment of counsel. The next friend petition was filed within the statute of limitations, a fact not challenged by the State.

3. The State concedes that “Reid has persistent delusions about government controlling his life and the legal process.” *See* State’s Response at p. 5, ¶ 5.

4. This Court recognized, in the June 13, 2006 Order, that Dr. Woods, a neuropsychiatrist who has diagnosed Mr. Reid with a severe neurological disorder, has “impressive credentials.” *See* Order at p. 15. Further, the Court “does not dispute or attempt to challenge [either] Dr. Woods’ diagnosis....[or his] recitation of the details of Mr. Reid’s ‘scientific technology’ delusions.” *Id.*

5. Dr. Woods had tendered an affidavit regarding Mr. Reid’s current mental state, which is a product of left temporal lobe dysfunction, a neurological disorder “which has produced in Mr. Reid a chronic, schizophrenia-like psychosis which has severely impaired his ability to weigh, deliberate, inform and cooperate.” *See* Woods Affidavit at p. 3, ¶ 8.

6. Dr. Woods has determined that Mr. Reid is presently incompetent under both the standard enunciated in *Rees v. Peyton*, 384 U.S. 312, 314, 86 S.Ct. 1505, 1506,

16 L.Ed.2d 583 (1966) (“whether [the condemned person] has capacity to appreciate his position and make a rational choice with respect to continuing or abandoning further litigation or on the other hand whether he is suffering from a mental disease, disorder or defect which may substantially affect his capacity in the premises” and *State v. Nix*, 40 S.W.3d 459 (Tenn. 2001) (“inability to manage his personal affairs or understand his legal rights and liabilities”). *Id.* at p. 3-5, ¶ 10, 12, 13, 14, 16.

7. This Court by Order entered June 13, 2006 dismissed the post-conviction petition, finding an insufficient prima facie showing of present incompetency under the competency standard for tolling the statute of limitations enunciated in *State v. Nix*, 40 S.W.3d 459 (Tenn. 2001). The next friend asserts that far more evidence of Reid’s present incompetency has been tendered than required to demonstrate a prima facie case under either *Rees* or *Nix* and she wishes to appeal as of right the Court’s findings of law and fact and the procedures utilized by the Court.

8. The issues herein are complicated questions of first impression which impact whether Mr. Reid, a concededly mentally ill man, lives or dies and whether his next friend is able to protect his life, as well as his legal rights and liabilities, through access to the courts to which other similarly situated prisoners and non-death sentenced prisoners are entitled. In the June 13, 2006 Order, the Court states as follows:

Initially, the Court notes that these issues lead us into uncharted territory. Even though our supreme court has addressed the tolling of the one year post-conviction statute of limitations due to incompetency, the precise issues raised in the present case are without precedent. Therefore, the Holton/Reid opinion [*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 (filed May 4, 2006 at Nashville)] provides our only guidance at the present time.

At the time the hearing was conducted a Petition to Rehear in *Holton/Reid* was still pending.

9. The Court also noted that the Tennessee Supreme Court in *Holton/Reid* only “apparently” adopted the Nix competency standard. Further, the Court recognized that the discussion in that opinion of Rees and its progeny “invites some uncertainty.” This Court has previously acknowledged that “Mr. Reid’s competency has always been at issue from virtually the date of his arrest....” Therefore, application of the appropriate competency standard herein is critical.

10. The issues herein are further complicated by the lack of any precedent because the next friend has been placed in a situation where the courts of the State of Tennessee keep moving the ball. On May 24, 2005, the Supreme Court affirmed Mr. Reid’s convictions and death sentences in the Montgomery County Circuit Court and set an execution date of October 5, 2005. *State v. Reid*, 164 S.W.3d 286 (Tenn. 2005) (Reid II).

11. On June 27, 2005, the Supreme Court granted interlocutory appeal in *Paul Reid, Jr., v. State of Tennessee*, Case No. M2005-00260-SC-S09-PC, to decide the appropriate procedures and standards for determining competence to proceed in post-conviction. That case arises from the post-conviction litigation in Davidson County Case No. 97-C-1834 (Reid I). The case is still pending before the Tennessee Supreme Court, oral argument having been heard on February 2, 2006.

12. On September 23, 2005, prior to the issuance of the Tennessee Supreme Court’s order resetting the execution to June 28, 2006, and with Mr. Reid’s execution scheduled to occur in two weeks, undersigned counsel filed a Petition for Post-

Conviction Relief (appended as Attachment 1), Motion for Appointment of Counsel (Attachment 2), and Motion for a Stay of Execution (Attachment 3) in the Montgomery County Circuit Court on behalf of Mr. Reid. The motions and petition alerted the post-conviction court to the pending competency litigation and counsel's belief that Mr. Reid is presently incompetent and thus unable to rationally communicate with counsel, make decisions regarding pursuing further appeals, and/or execute legally binding documents on his own behalf.¹ Counsel asserted that the pleadings were filed on behalf of Mr. Reid in order to protect his rights.

13. This Court granted all motions after a hearing conducted on September 29, 2005. The State recognized the good faith intentions of counsel, and the quandary facing them, asserting as follows:

The State would submit though, we have no question that the Capital Public Defender at this point honestly believes that Mr. Reid is legally incompetent? [sic] None of us just know what "legally incompetent" means until Judge Blackburn's Rule 9 is ruled on.

The State believes that given this very difficult impasse that the Capital Public Defender has reached on this obviously very difficult matter....

(Transcript of September 29, 2005 Hearing at p. 13) (Attachment 4).

14. At the hearing on September 29, 2005, this Court recognized long-standing concerns about Mr. Reid's incompetency:

The point I am making about reflecting on that [previous trial-level competency proceedings] is that Mr. Reid's competency has always been at issue from virtually the date of his arrest, so this Court knows that this assertion by Ms. Gleason and Mr. Hare is not some eleventh hour contention, that his competency has been in question for a long time.

¹ Counsel were permitted by the Davison County post-conviction court to file an unverified amended petition in that case, given counsel's concerns about Mr. Reid's competency and the information provided to that court in support of those concerns.

Id. at p. 22.

15. This Court accepted the post-conviction petition and entered orders appointing counsel and staying the execution date, which was set for June 28, 2006. The State appealed those Orders, the Tennessee Supreme Court consolidated the case with *Holton v. State* for purposes of oral argument, and vacated all orders in an opinion issued May 4, 2006. *See Holton/Reid, supra*. The Tennessee Supreme Court ruled, as a matter for first impression, that filing by a “next friend” is the proper means of initiating post-conviction litigation where a petitioner is believed to be presently incompetent.

16. A Petition to Rehear *Holton/Reid* was filed on May 15, 2006 requesting the Court to correct factual errors in the opinion and to clarify the competency standard for proceeding on a post-conviction petition filed by a “next friend.” To counsel’s knowledge the Tennessee Supreme Court has yet to rule on this motion.

17. The next friend filed a post-conviction petition on behalf of Mr. Reid on May 23, 2006, along with a motion for a stay of execution and appointment of counsel. The next friend petition was filed within the statute of limitations, a fact not challenged by the State.

LEGAL AUTHORITY MANDATING A STAY

18. Pursuant to the Tennessee Supreme Court Rules, Rule 28, Section 10, dismissal of a petition is covered under T.R.A.P. 3(b) as an appeal of right and the next friend has thirty (30) days to file a notice of appeal from entry of judgment. *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 the Court of Criminal Appeals. The Court of Criminal Appeals 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), also involving the appeal of dismissal of a post-conviction petition filed by next friend.

19. Thus, this Court clearly has jurisdiction in this case until the time to file a notice of appeal has expired. This Court also has jurisdiction to enter a stay of execution pending appeal. *See* Supreme Court Rule 28, Section 10(C).

20. This Court's Order of June 13, 2006 is a final order denying relief as contemplated by 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.) When a petition for post-conviction relief is summarily dismissed, petitioner is entitled to an appeal, and where indigent, he is entitled to appointment of counsel. *See Recor v. State*, 489 S.W.2d 64 (Tenn. Crim. App. 1972).

21. The Court's Order of June 13, 2006 denied a stay of execution since the petition was not "accepted" and was dismissed. The Court stated that "[r]elief from the currently scheduled execution date must be pursued in the appropriate court." However, pursuant to the authorities cited above, and Tenn. Code Ann. § 40-30-120(d) ("Any motion for a stay pending consideration of the post-conviction petition must be presented first to the court where the petition is filed."), this is the Court with jurisdiction to issue a stay pending a TRAP 3(b) appeal of right of the summary dismissal of a post-conviction petition.

22. Mr. Reid's rights to due process, equal protection, and access to the courts under the Tennessee and United States Constitutions would be violated if this Court

denies his next friend the ability to appeal as of right.² Failure to grant the stay of execution is a denial of the rights secured by the due process clauses of the Tennessee and U.S. Constitutions.

23. The next friend requests an expedited hearing on this matter due to the imminent execution date.

WHEREFORE, this Court should enter a stay of execution so that the right to appeal this Court's dismissal of this petition may be vindicated.

Respectfully submitted,

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² In the analogous situation of a condemned inmate withdrawing a post-conviction petition, procedures have already been established which ensure that cessation of the second tier of the capital appeals process is only permitted if the condemned has made in a knowing, intelligent, voluntary, and competent (under *Rees*) decision to do so. Tennessee Supreme Court Rule 28, Section 11. The right to appeal a post-conviction court's finding is also specifically protected. *See* Tennessee Supreme Court Rule 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.

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of this Motion was hand delivered to Art F. Bieber, Assistant District Attorney General, 19th Judicial District, 101 N 3rd Street, Clarksville, TN 37040-3401 on this the _____ day of June, 2006.

Kelly A. Gleason