

IN THE CIRCUIT COURT FOR THE 19TH JUDICIAL DISTRICT
MONTGOMERY COUNTY, TENNESSEE
DIVISION III

PAUL DENNIS REID, JR.)	
By and through Linda Martiniano,)	
Next Friend)	
PETITIONER)	
)	No. 38887
vs.)	
)	Capital Case
STATE OF TENNESSEE)	Post-Conviction
RESPONDENT)	Execution Date: June 28, 2006

ORDER

I. INTRODUCTION

This matter is before the Court upon pleadings entitled “Petition for Post Conviction Relief” and “Motion for a Stay of Execution and Appointment of Counsel” filed on May 23, 2006. As discussed below, these proceedings are unique for a variety of reasons. First, the petition was filed on behalf of Paul Dennis Reid, Jr. by his sister, Linda Martiniano, Kelly Gleason, an assistant Post-Conviction Defender,¹ and Connie Westfall, an investigator with the Post-Conviction Defender’s Office

¹ Kelly Gleason of the PCDO represents Paul Dennis Reid, Jr. in his Davidson County post-conviction proceeding. In that matter, Mr. Reid filed a *pro se* petition; however, counsel alleged Mr. Reid was incompetent to verify the amended petition. An interlocutory appeal is pending in the Davidson County matter which relates to the appropriate competency standard and procedure to be used in determining competency when a petitioner claims he is unable to continue with post-conviction proceedings due to an alleged incompetency.

("PCDO"). All three seek the status of "next friend" in pursuing the post-conviction relief due to the alleged incompetency of Mr. Reid.

By order of the Tennessee Supreme Court, the execution of Paul Dennis Reid, Jr. is scheduled for June 28, 2006. Kelly Gleason and Nicholas Hare, Assistant Post-Conviction Defenders, simultaneously filed a motion to stay the execution and appoint their office as counsel. Gleason and Hare scheduled the instant motion to be heard on June 12, 2006.

Having carefully reviewed the pleadings and attachments and considered the argument of counsel, the Court finds that the petition for post-conviction relief and accompanying affidavits fail to make the requisite threshold showing established in Holton vs. State and Reid vs. State, ___ S.W.3d ___, Tenn. Sup. Ct. No. M2005-01870-SC-S10-PD and No. M2005-02398-SC-S10-PD (filed May 4, 2006 at Nashville) ("Holton/Reid"). Therefore, the petition for post conviction relief filed by the next friend is DISMISSED. Consequently, the motion to stay the execution and appoint counsel is hereby DENIED.

II. PROCEDURAL BACKGROUND

Paul Dennis Reid, Jr. was convicted by a jury on two counts of first degree murder for killing two Baskin Robbins employees in Clarksville, Tennessee and

received the death penalty on both counts. His convictions and sentences were affirmed by the Tennessee Supreme Court on May 24, 2005 (*See State v. Paul Dennis Reid, Jr.*, 164 S.W.3d 286 (Tenn. 2005)). An initial execution date was set by the Tennessee Supreme Court.

On September 23, 2005, the PCDO filed a petition for post-conviction relief which was unsigned by the petitioner. As of said date, the petitioner had not filed a *pro se* post-conviction petition. However, in the September filing by the PCDO, the verification portion indicated Mr. Reid was unable to file for relief due to an alleged incompetency. This Court accepted the petition and granted a stay of the scheduled execution.

This petition was consolidated into an appeal with another death row inmate, Daryl Keith Holton, who did not file a petition for post-conviction relief within his one-year statute of limitations. The PCDO claimed both men were incompetent to seek post-conviction relief.

On May 6, 2006, the Tennessee Supreme Court released an opinion in *Daryl Keith Holton v. State and Paul Dennis Reid, Jr. v. State*. The opinion dismissed the petitions filed by both Holton and Reid. The execution was rescheduled for June 28, 2006. It is this opinion and the resulting next friend petition for post-conviction relief which bring the Court to the present proceedings.

III. DISCUSSION

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 the present case are without precedent. Therefore, the Holton/Reid opinion provides our only guidance at the present time.

In this case the Court must first determine who may proceed as next friend of Mr. Reid. Secondly, the Court must determine whether the next friend petition makes a threshold showing of present mental incompetency such that a full competency hearing is warranted. Finally, the Court must address the request for a stay of the scheduled execution.

A. Standing/Next Friend

In Holton/Reid, the Court, citing Whitmore v. Arkansas, 495 U.S. 149, 162 (1990) and Rees v. Peyton, 384 U.S. 312 (1966) discussed two prerequisites for standing as a “next friend”:

First, a “next friend” must provide an adequate explanation – such as inaccessibility, mental incompetence, or other disability – why the real party in interest cannot appear on his on behalf to prosecute the action Second, the “next friend” must be truly dedicated to the best interests of the person on whose behalf he seeks to litigate . . . , and it has

been further suggested that a “next friend” must have some significant relationship with the real party in interest.

Holton/Reid, slip op. at pp. 6 & 7 (*quoting* Whitmore v. Arkansas, 495 U.S. 149, 162 (1990)).

In the instant case, Linda Martiniano, Kelly Gleason and Connie Westfall seek to proceed as “next friends” in the post-conviction proceeding. After considering the affidavit of Linda Martiniano and the letters from Mr. Reid to Martiniano, the Court finds ample evidence from which to conclude that Ms. Martiniano satisfies both prerequisites. Here, Ms. Martiniano alleges Mr. Reid is mentally incompetent. Her affidavit and letters adequately show she is dedicated to Mr. Reid’s best interests and has a significant relationship with him.

Having found Ms. Martiniano qualifies as a “next friend”, the issue of whether Gleason and Westfall qualify is irrelevant or otherwise rendered moot.

B. Standard for Threshold Determination

Apparently, the Holton/Reid Court concluded the Nix standard should be applied to this case to determine if the next friend has met her burden of making a threshold showing that Mr. Reid is presently incompetent. However, the standard actually adopted by the Holton/Reid Court was questioned at the June 12 proceeding.

Kelly Gleason, who appeared at the June 12 proceeding in support of the petition,² argued the Tennessee Supreme Court adopted the Rees v. Peyton standard in Holton/Reid.

In Holton/Reid, our supreme court discussed the “next friend” proceedings in various contexts in federal court. While it is true the Court referenced Rees v. Peyton, 384 U.S. 312 (1966) in its discussion, the Holton/Reid Court never suggested Rees was an appropriate standard in the instant case.

The Court then turned to an analysis of the appropriate standard against the backdrop of its previously adopted standards. Included in its analysis were Seals v. State, 23 S.W.3d 272 (Tenn. 2000)(a “next friend” may initiate a petition for post-conviction relief on behalf of an inmate who, due to alleged mental incompetence, failed to file his petition within the limitations period) and State v. Nix, 40 S.W.3d 459 (Tenn. 2001) (requirements for prima facie showing of mental incompetence to toll statute of limitations).

In Nix, clarifying Seals, the Court held that in order to toll the statute of

² The motion filed by Ms. Gleason and Mr. Hare sought appointment of their office as counsel. However, at the time of the hearing, Ms. Gleason conceded she was not yet serving in the capacity of counsel for Mr. Reid in the Montgomery County case. The Court permitted Ms. Gleason to make legal arguments relating to the issues before the Court.

limitations for filing a post-conviction petition “a prima facie showing of mental incompetency requires more than conclusions or assertions and instead requires ‘specific factual allegations that demonstrate the petitioner’s inability to manage his personal affairs or understand his legal rights and liabilities.’” Holton/Reid, slip op. at p. 9 (*quoting Nix*). Ms. Gleason rejected the proposition that the Nix standard was the resulting competency standard claiming various federal and state constitutional implications.

Admittedly, the Holton/Reid Court’s reference to Rees invites some uncertainty. However, while Rees is cited secondarily in at least two places, the Holton/Reid Court did not place significance on the Rees standard.

Near the end of its analysis, the Court cited with approval the process adopted in Van Tran v. State and State v. Nix. Viewing the Holton/Reid opinion in its entirety, this Court concludes that the following Nix standard was adopted by the Holton/Reid Court and should be applied in this case:

[The next friend] must make specific factual allegations that demonstrate the petitioner’s inability to manage his personal affairs or understand his legal rights and liabilities.

C. Threshold Showing/Prima Facie Case

Applying the Nix standard, the Court must determine if the next friend has made the requisite threshold showing to warrant a hearing on the merits. Citing Nix, the Holton/Reid Court described the requirements necessary in Nix to make a prima facie showing of present mental incompetence. Again, such a showing requires more than “conclusions or assertions” or “general allegations” of mental illness. Instead, it requires “specific factual allegations” that demonstrate the petitioner’s inability to manage his personal affairs or understand his legal rights and liabilities. Nix also noted the prima facie showing may be satisfied “by attaching to the petition affidavits, depositions, medical reports, or other credible evidence that contain specific factual allegations showing the petitioner’s incompetence.” Holton/Reid, slip op. at 9 (*quoting* Nix). The Nix Court further explained:

While affidavits and depositions of mental health professionals may be utilized, they are not essential, and a petitioner may rely upon affidavits and depositions from family members, prison officials, attorneys, or any other person who has knowledge of facts that demonstrate either the petitioner’s inability to manage his personal affairs or the petitioner’s inability to understand his legal rights and liabilities.

Id.

The Holton/Reid Court also compared similar standards adopted by the Court in

non-post-conviction settings. Specifically, the Court compared the standard of competency to be executed and prima facie showing of mental incompetence as discussed in Van Tran v. State.

As in Nix, the Van Tran Court held that a prima facie case of an inmate's present mental incompetency requires more than unsupported assertions of mental incompetency. In Van Tran, the Court explained:

[W]e adopt a rule that places the burden on the prisoner to make a threshold showing that he or she is presently incompetent. This burden may be met by the submission of affidavits, depositions, medical reports, or other credible evidence sufficient to demonstrate that there is a genuine question regarding petitioner's present competency. In most circumstances, the affidavits, depositions, or medical reports attached to the prisoner's petition should be from psychiatrists, psychologists, or other mental health professionals If the trial court is satisfied there exists a genuine disputed issue regarding the prisoner's present competency, then a hearing should be held.

Holton/Reid, slip op. at page 10 (*quoting* Van Tran, 6 S.W.3d at 269).

After discussing Nix and Van Tran, the Holton/Reid Court stated, "We believe a similar process is appropriate in determining whether a petition for post -conviction relief may be filed by a "next friend" on behalf of an inmate who has not signed the petition or verified the allegations under oath." Slip op at 10. The Court held:

A prima facie showing to file a post-conviction petition as "next friend" requires evidence of an inmate's present

mental incompetency 'by attaching to the petition affidavits, depositions, medical reports, or other credible evidence that contain specific factual allegations showing the petitioner's incompetence.' Mere assertions or allegations of past or present mental incompetency are not sufficient; instead, the supporting evidence of past or present mental incompetency may toll the post-conviction statute of limitations. If a prima facie case is satisfied, and if there is likewise a showing that the putative next friend is acting in the best interests of the petitioner, additional hearings may be held for a determination of mental competency.

Holton/Reid, slip op. at 10.

1. Attachments to the Petition

As noted above, the Holton/Reid Court concluded that “[a] prima facie showing to file a post-conviction petition as “next friend” requires evidence of an inmate’s present mental incompetency ‘by attaching to the petition affidavits, depositions, medical reports, or other credible evidence that contain specific factual allegations showing the petitioner’s incompetence.” In the instant case the purported “next friend” petition included the following attachments: Affidavit of Linda Martiniano, Affidavit of Kelly Gleason, Affidavit of Connie Westfall, Affidavit of George W. Woods, Jr., M.D., Affidavit of James A. Simmons, and Letters from Paul

Dennis Reid, Jr. to his sister, Linda Martiniano.³

(a) Affidavit of Linda Martiniano & Letters from Reid

In her affidavit Linda Martiniano testified that she is the sister of Paul Dennis Reid, Jr. and resides in Texas. She indicates she has visited her brother on various occasions since his incarceration with the last visit occurring on November 9, 2005. Ms. Martiniano expresses generally her belief that her brother is severely mentally ill; however, she provides no specific factual basis to support her conclusions other than a scant reference to “scientific technology.”

Ms. Martiniano also stated she received letters from her brother. These letters are dated October 2001, November 22, 2004, December 7, 2004, and April 3, 2005. The Court has reviewed the correspondence and finds that none of the letters shed light on Mr. Reid’s present competence.

³ The State submitted the affidavit of prison guard at Brushy Mountain where Mr. Reid is incarcerated. However, as noted in open court, this Court does not conclude that counter affidavits are contemplated by Holton/Reid for the purposes of establishing the threshold showing. Accordingly, said affidavit has been filed under seal and will not be considered.

(b) Affidavit of Kelly Gleason

Kelly Gleason is an Assistant Post-Conviction Defender. Even though she does not represent Mr. Reid in the present case, she does represent him in one of the Davidson County cases (Captain D's). Ms. Gleason is assisting in the instant matter and submitted her affidavit along with the next friend petition for post-conviction relief.

Ms. Gleason's affidavit is approximately 42 pages long and chronicles her visits and/or communications with Mr. Reid since she began representing him in 2004. The affidavit contains opinions and conclusions drawn by Ms. Gleason from her observations of Mr. Reid. The majority of the entries refer to the apparent delusions of Mr. Reid relating to the "scientific technology."

Few, if any, of the entries discuss in detail Mr. Reid's knowledge or lack thereof of the present stage of the proceedings. One entry following the release of the Tennessee Supreme Court's opinion in this case noted the opinion's holding and the resulting scheduled execution date. The final entry noted that Ms. Gleason informed Mr. Reid of the Holton/Reid opinion and the June 28, 2006 execution date.

None of the other entries indicate Mr. Reid was advised of his right to file for post-conviction relief from the convictions and sentences in the Montgomery County case. Similarly, none of the entries actually discussed whether Mr. Reid understood

his right to file for post-conviction relief or whether he understood the consequences should he fail to do so.

(c) Affidavit of Connie Westfall

Connie Westfall is employed as an investigator with the Post-Conviction Defender's Office. Ms. Westfall submitted an affidavit detailing her observations and opinions of Mr. Reid during her visits and communications with him.

As with Ms. Gleason's affidavit, Ms. Westfall's affidavit details her opinions about his mental state on any given visit. It is not clear when her entries ended but no visits are shown for the last few months. Ms. Westfall's affidavit does not include references to Mr. Reid's understanding of his legal rights and liabilities.

(d) Affidavit of George W. Woods, Jr. M.D.

The next friend also attached the affidavit of George W. Woods, Jr. M.D. dated May 22, 2005. Dr. Woods testified that he is a physician specializing in neuropsychiatry with offices in four states.

According to Dr. Woods he evaluated Mr. Reid on August 18, 2005 and October 6, 2005. Following these evaluations and a review of multiple previous mental health records (noting the reports of Dr. Pamela Auble, Dr. Daniel Martell, Dr.

Helen Mayburg, Dr. Robert Kessler, Dr. Xavier Amador, Dr. Patricia Allen, testimony of these experts, neuroimaging reports, neuropsychological testing), Dr. Woods opined that Mr. Reid suffers from a neurological disorder – left temporal lobe dysfunction. He adds that “the temporal lobe dysfunction has produced in Mr. Reid a chronic, schizophrenic-like psychosis which has severely impaired his ability to weigh, deliberate, inform and cooperate.”

Dr. Woods said he evaluated Mr. Reid under both the Rees v. Peyton and State v. Nix standards. He opines that Mr. Reid is presently incompetent under both standards. Dr. Woods acknowledges Mr. Reid’s longstanding delusion that he is under a government-directed surveillance and influence. This delusion, he adds, impels, invades and guides Mr. Reid’s daily activities as well as decision-making processes. These delusional beliefs “substantially preclude him from making a rational choice among his legal options (citing Rees).” “Mr. Reid currently has persecutory, paranoid delusions that ‘the military government’ is using ‘scientific technology’ to torture him. He 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.’ Based on these observations, Dr. Woods opines that Reid is incompetent to decide whether to pursue a post-conviction petition on his own behalf or abandon that right.

Woods testified that Mr. Reid currently is suffering from perceptual and

memory impairments which render him unable to reliably relate events of his trial. The delusional beliefs that current counsel are members of a conspiracy against him preclude rational communication regarding his legal options. Accordingly, Reid is unable to effectively perceive and understand his legal rights and liabilities in any meaningful sense. Woods claims that Reid's ability to manage his personal affairs have been "interfered with."

The Court recognizes Dr. Woods' impressive credentials and his diagnosis of a neurological disorder. The Court does not dispute or attempt to challenge Dr. Woods' diagnosis. Further, the Court does not challenge Dr. Woods' recitation of the details of Mr. Reid's "scientific technology" delusions.

However, the Court's mandate here is to determine if the submissions establish the requisite threshold showing required in Holton/Reid. Clearly, Dr. Woods incorporates the language of the Holton/Reid standard into his affidavit seemingly to satisfy the standard. However, his opinions or conclusions that the standard has been met without supporting specific factual allegations fall short. Conspicuously absent from Woods' submission is a claim that Mr. Reid has ever been specifically asked about his legal rights and liabilities.

The standard requires a showing that Mr. Reid **cannot** "manage" or

“understand” not that the affiant **believes** that Mr. Reid cannot manage or understand. This showing must be made by “specific factual allegations.” Dr. Woods’ affidavit fails to do so.

(e) Affidavit of James A. Simmons

James A. Simmons testified that he is an attorney who represents Mr. Reid on appeal of his Davidson County cases and served as appellate counsel on Mr. Reid’s Montgomery County case. He states that he has met with Mr. Reid on several occasions to discuss his legal affairs. However, in Mr. Simmons’ opinion, Mr. Reid is never able to carry on a rational conversation about his cases. Mr. Simmons also references the delusions that have been a part of this case from its inception.

In this post-conviction context, it seems reasonable to require specific facts showing the petitioner does not understand, among other things, the right to file for post-conviction relief and/or his understanding of the consequences should he fail to do so. In other words these affiants (lay or expert) cannot simply state their opinions and draw their own conclusions that Mr. Reid is unable to manage his personal affairs or understand his legal rights and liabilities based on their observations.

D. Stay of Execution

The motion also seeks to stay the execution now scheduled for June 28, 2006. Arguably, this Court is without jurisdiction to grant such a stay until it accepts a post-conviction petition. Because the Court finds the requisite threshold showing has not been made, the petition has not been accepted by this Court. Accordingly, the motion to stay the execution is DENIED. Relief from the currently scheduled execution date must be pursued in the appropriate court.

IV. CONCLUSION

For the reasons set out above, the Court finds that Mr. Reid's sister, Linda Martiniano, meets the requirements to proceed as "next friend. Further, as to the threshold showing the Court recognizes the extremely serious nature of this capital case and has viewed these submissions in their most favorable light. Even so, the Court must adhere to the procedure and standard adopted by the Tennessee Supreme Court in Holton/Reid.

The Holton/Reid Court made it clear that the threshold showing required more than "mere assertions or allegations of past or present mental incompetence" and more than "[u]nsupported, conclusory, or general allegations of mental illness." Instead, the submissions must contain "**specific factual allegations** that demonstrate the petitioner's inability to manage his personal affairs or understand his legal rights and

liabilities.”

While some of the submissions contain detailed facts of Mr. Reid’s behavior and illuminate variations on his “scientific technology” delusions, none of the submissions contain specific factual allegations that demonstrate Mr. Reid is either unable to manage his personal affairs or understand his legal rights and liabilities.

These voluminous submissions are devoid of any indication that Mr. Reid was questioned about his ability to manage his personal affairs or his understanding of his legal rights and liabilities or that such an inquiry was attempted but was unsuccessful due to his alleged present mental incompetence.

Accordingly, the petition for post-conviction relief is DISMISSED. The motion for a stay execution and appointment of counsel is hereby DENIED.

IT IS SO ORDERED, this the 13th day of June, 2006.

John H. Gasaway, III
Circuit Judge