

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, TENNESSEE

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

MOTION FOR A STAY OF EXECUTION
AND APPOINTMENT OF COUNSEL

Comes Linda Martiniano, as sister and next friend of Paul Dennis Reid, Jr., with the assistance of undersigned counsel, and moves for an order staying the execution scheduled for **June 28, 2006** and for appointment of counsel. Contemporaneously with this motion, Linda Martiniano, as next friend, filed a Petition for Post-Conviction Relief on behalf of Mr. Reid. Attached to the Petition are affidavits of neuropsychiatrist Dr. George Woods, Linda Martiniano, Kelly Gleason, and Connie Westfall setting out with specificity the factual basis for their belief that Mr. Reid is presently incompetent.

Petitioner is statutorily entitled to a stay of execution. “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.” Tenn. Code Ann. § 40-30-120(a) (emphasis added). Further, as he is indigent, petitioner is entitled to appointment of counsel. “If a petitioner not represented by counsel requests counsel and the court is

satisfied that the petitioner is indigent as defined in § 40-14-201, the court **shall** appoint counsel to represent the petitioner.” Tenn. Code Ann. § 40-30-107(b)(1) (emphasis added).

PROCEDURAL HISTORY

On September 18, 1999, Paul Dennis Reid, Jr., was convicted of two counts of premeditated murder, two counts of felony murder, two counts of especially aggravated kidnaping, and one count of especially aggravated robbery in the Montgomery County Circuit Court. On September 22, 1999, the jury sentenced Mr. Reid to death following a sentencing hearing. On November 10, 1999, the trial court entered the judgments in the case. In addition to the death sentences imposed for the murder counts, the court sentenced Defendant to twenty-five years on each of the especially aggravated kidnaping charges and twenty-five years on the especially aggravated robbery charge. On May 24, 2005, the Tennessee Supreme Court affirmed Mr. Reid’s convictions and sentences. *State v. Reid*, 164 S.W.3d 286 (Tenn. 2005).

On September 23, 2005, undersigned counsel filed a Petition for Post-Conviction Relief, Motion for Appointment of Counsel, and Motion for a Stay of Execution in the Montgomery County Circuit Court on behalf of Mr. Reid. Counsel asserted that the pleadings were filed on behalf of Mr. Reid in order to protect his rights while his current competency was the subject of an interlocutory appeal, *Paul Reid, Jr., v. State of Tennessee*, Case No. M2005-00260-SC-S09-PC, in his Davidson County post conviction case. On September 29, 2005, the Montgomery County Circuit Court conducted a hearing on the pending motions, granted the motions, and ordered the parties to report to this Court upon the Tennessee Supreme Court’s decision.

On October 13, 2005, the State filed an application for extraordinary appeal in the Court of Criminal Appeals which was denied on October 19, 2005. On October 25, 2005, the State Filed a Rule 10 application in the Tennessee Supreme Court, which granted the application on November 29, 2005. The Tennessee Supreme Court ordered that the case be consolidated with *Holton v. State* for purposes of oral argument.

On May 4, 2006, the Tennessee Supreme Court issued an opinion in *Holton v. State* and *Reid v. State* vacating this court's orders. See Attachment 1. The Court ruled that filing by a "next friend" is the proper means of initiating post-conviction litigation where a petitioner is believed to be presently incompetent. Thus Paul Reid's sister, Linda Martiniano, has initiated this post-conviction litigation on behalf of her brother, who is currently mentally incompetent.¹

LEGAL STANDARD AND ARGUMENT

The legislature clearly mandates the immediate issuance of a stay of execution by the court of conviction upon the filing of a post-conviction petition. "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." Tenn. Code Ann. § 40-30-120(a) (emphasis added).

Similarly, petitioner is entitled to counsel. "If a petitioner not represented by counsel requests counsel and the court is satisfied that the petitioner is indigent as defined in § 40-14-201, the court shall appoint counsel to represent the petitioner." Tenn. Code Ann. § 40-30-107(b)(1) (emphasis added). Next friend Linda Martiniano has filed, on

¹ Undersigned counsel Gleason and investigator Connie Westfall also seek next friend status, as explained in the Petition for Post-Conviction Relief.

Petitioner's behalf a post-conviction petition in this case. Petitioner was found to be indigent at the time of the trial in this matter and upon appeal. He has previously been declared to be indigent and permitted to proceed *in forma pauperis* in the United States District Court, Middle District of Tennessee, Nashville Division; United States Court of Appeals for the Sixth Circuit; Tennessee Supreme Court; the Tennessee Court of Criminal Appeals; and the Circuit Court for Davidson County, Tennessee. His financial status has not changed since these previous findings of indigence.

It is appropriate for the Court to appoint the Office of the Post-Conviction Defender, 530 Church Street, Suite 600, Nashville, TN 37243, which is currently representing Mr. Reid in his post-conviction litigation in Davidson Case No. 97-CR-1834. "It is the primary responsibility of the post-conviction defender to represent, . . . any person convicted and sentenced to death in this state who is without counsel and who is unable to secure counsel due to indigency . . ." Tenn. Code Ann. § 40-30-106(a). Rule 13(h) of the Rules of the Tennessee Supreme Court also mandates the appointment of the Post-Conviction Defender in this matter. It is clear that the intent of Tenn. Code Ann. § 40-30-106(a) and Rule 13(h) is that the Office of the Post-Conviction Defender should be appointed unless there is a conflict. The Office of the Post-Conviction Defender is presumptively the appropriate public defender organization to be appointed in a post-conviction case filed by an indigent petitioner under a sentence of death, and thus should be appointed as counsel where a next friend has initiated litigation on behalf of a petitioner.

CONCLUSION

Pursuant to the filing of the post-conviction petition by next friend Linda Martiniano, Paul Dennis Reid, Jr., is statutorily entitled to both a stay of execution and appointment of counsel to represent him in his post-conviction proceedings. Counsel ask that this motion be set for hearing at 9 a.m. on June 12, 2006.

Respectfully Submitted,

Kelly A. Gleason
Assistant Post-Conviction Defender

Nicholas D. Hare
Assistant Post-Conviction Defender

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the forgoing Motion was delivered to Art F. Bieber, Assistant District Attorney General, 19th Judicial District, 101 N 3rd Street, Clarksville, TN 37040-3401, by placing a copy in the District Attorney's box at the clerk's office on this the ____ day of May, 2006.

Kelly A. Gleason