No. 03-5526

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JANET KIRKPATRICK
Next Friend for Paul Reid
Petitioner-Appellant

v.

RICKY BELL
Respondent-Appellee

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

RESPONSE IN OPPOSITION TO MOTION FOR STAY OF EXECUTION

PAUL G. SUMMERS
Attorney General & Reporter

MICHAEL E. MOORE
Solicitor General

GORDON W. SMITH
Associate Solicitor General

AMY L. TARKINGTON
Deputy Attorney General

JOSEPH F. WHALEN
Assistant 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 have been affirmed by the Tennessee Supreme Court, and the execution of those sentences is scheduled for April 29, 2003. Reid has affirmatively and repeatedly requested that he be allowed to forgo his appeals from the seven death sentences that he has received,[1] including, most recently, at a three hour hearing before the district court conducted today, April 28, 2003. That hearing was held on the motions of petitioner, Janet Kirkpatrick, as a proposed next friend, for a stay of execution and for appointment of counsel, alleging that Reid was not competent to waive his appeals. The district court, however, determined that Reid was competent and denied the motions. Petitioner now asks this Court to grant a stay of execution.

THE DISTRICT COURT PROPERLY DENIED THE MOTION FOR STAY OF EXECUTION BY THE PROPOSED NEXT FRIEND.

A. ***Petitioner's Showing Was Insufficient to Warrant Conferral of "Next Friend" Status.***

"Federal courts are courts of limited jurisdiction," and "do not have general appellate

[1]*See* Attachments 1 - 4 (February, 27, 2003, order on request to abandon appeals in *State v. Reid*, Nos. 93-C-1836, 1834 (Davidson Co. Crim. Ct. Feb. 27, 2001); February 20, 2003, order on motion to dismiss appeals in *State v. Reid*, Nos. 97-C-1834, 1836 (Davidson Co. Crim. Ct. Feb. 20, 2003); March 26, 2003, letter to Tennessee Supreme Court advising of election not to pursue appeals; April 22, 2003, letter to Tennessee Supreme Court reiterating choice not to pursue post-conviction appeals).

jurisdiction over the Tennessee courts." *West v. Bell*, 242 F.3d 338, 340 (6th Cir. 2001).

> 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.

Demosthenes v. Baal, 495 U.S. 731, 737, 110 S.Ct. 2223, 109 L.Ed.2d 762 (1990). Here, Reid himself has chosen not to invoke the federal court's jurisdiction, and a "next friend" may not sue in his place automatically. "The burden is on the 'next friend' clearly to establish the propriety of his status and thereby justify the jurisdiction of the court." *Whitmore v. Arkansas*, 495 U.S. 149, 164 (1990).

"[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*, 495 U.S. at 165 (emphasis added), and "the burden is . . . on the putative 'next friend' to demonstrate, not simply assert, the incompetence of the prisoner." *West*, 242 F.3d at 640. 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.'" *Id.* (quoting *Rees v. Peyton*, 384 U.S. 312, 314, 86 S.Ct. 1505, 16 L.Ed.2d 583 (1966)). In the absence of such a showing, the federal courts lack jurisdiction to enter a stay.

After an evidentiary hearing, at which Reid himself testified in response to questions

from both the district judge and counsel for petitioner,[2] 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 5) The requisite showing for "next friend" status is not satisifed "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 5, p. 7)[3]

---

[2]As the district court's order reflects, respondent objected to the holding of an evidentiary hearing, arguing that the determination should be made on the basis of the record evidence alone, and that any hearing conducted less than three days (and less than one court day) after the filing of petitioner's motion could only be a lopsided affair; respondent was in no position to subject petitioner's evidence to meaningful adversarial testing. The court having held the hearing, however, its determination as to Reid's competency is all the more compelling.

[3]In response to questioning by the district court, Mr. Reid identified the date and time of his execution; explained that he had been given a choice and had chosen lethal injection; and recognized that he was being executed for the 2 homicides at the Captain D's restaurant - - for the murders of Sarah Jackson and Steve Hampton. Mr. Reid noted that he had reviewed all of his legal options and had concluded that none of them were likely to grant him relief. It was his understanding that, once he had completed his direct appeal in the Tennessee Supreme Court, he had

Petitioner seeks to emphasize the district court's finding that Reid has a mental illness. But, as observed by the district court, the question is not whether Reid has a mental illness, but "whether Reid's mental problems prevent him from choosing to be executed or pursuing his appeals and living." (*Id.*, p. 6).

> We think it very probable, given the circumstances that perforce accompany a sentence of death, that in every case where a death-row inmate elects to abandon further legal proceedings, there will be a possibility that the decision is the product of a mental disease, disorder, or defect. Yet, *Rees* clearly contemplates that competent waivers are possible....

Franklin, 144 F.3d at 433 (quoting *Smith v. Armontrout*, 812 F.2d 1050, 1057 (8th Cir. 1987). The district court indeed found that Reid made a competent waiver despite his mental illness, concluding that his 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.

(Attachment 5, p. 7)[4] In the absence of a showing that Reid is "unable to litigate his own cause" by

---

the option to discontinue his appeals. He understood now that the federal public defender, acting through Mr. Reid's sister, was trying to remove that option/ right from him.

When the court returned to questioning Mr. Reid directly as to whether he understood that he would be executed in a matter of hours unless he chose to go forward with his appeals, Mr. Reid responded that this was not his day; that this day was about Sarah Jackson, Steve Hampton, Angele Holmes, Michelle Mace, Andrea Brown, Ronald Santiago, and Robert Sewell . After acknowledging the pain of the victims' families, Mr. Reid reiterated that he was aware that, unless he elected to pursue post-conviction remedies, the execution would go forward. When asked if anyone had put pressure on Mr. Reid or forced him not to proceed, Mr. Reid again turned the court's attention to the fact that 7 innocent people had lost their lives and stated that he accepted the verdicts of the 3 separate juries.

[4]Assertions that Reid suffers from brain damage, mental illness, psychosis and delusions about government surveillance since 1985 are not new but longstanding. *See State v. Reid*, 91

reason of incompetence, *see Whitmore*, 495 U.S. at 165, the district court properly concluded that it was without jurisdiction to enter a stay of execution. For the same reasons, this Court likewise lacks jurisdiction to grant petitioner's motion.

In this Court, citing *Harper v. Parker*, 177 F.3d 567 (6th Cir. 1999), petitioner seeks to alter the standard enunciated both by this Court in *West* and by the United States Supreme Court in *Whitmore* for conferring "next friend" status — that the putative "next friend" must clearly establish the propriety of his status and thereby justify the jurisdiction of the court.[5] But *Harper* did not involve a formal "next friend" petition and did not at all address the standard for conferring "next friend" status so as to confer jurisdiction on the federal court to grant a stay of execution. Instead, *Harper* held only that it was proper for a district court to rule that there was no "reasonable cause" to believe that the prisoner was incompetent so as to warrant conducting a "full-blown" evidentiary hearing — a holding that does nothing to aid petitioner's cause.[6] *Harper*, 177 F.3d at 571. "Next friend" status, and thus jurisdiction to enter a stay of execution, can only be granted upon a clear showing of incompetence.

To the extent that petitioner now complains that she was the *victim* of a "draconian" timetable, the district court noted that petitioner bore responsibility for any time pressures in ruling

---

S.W.3d 247, 268-271 (Tenn. 2002).

[5]Respondent notes that petitioner did not make this argument to the district court, instead citing to *Whitmore* for the appropriate standard for determining "next friend" status.

[6]Indeed, *Harper* observes that, "unless the district court erred in finding that there was no reasonable cause to believe that Harper was incompetent," there was no statutory right to a full evidentiary hearing on his competence, and only a showing of abuse of discretion would justify upsetting the district court's determination. 177 F.3d at 571-72.

on the motions filed because it is the petitioner who has chosen to bring this matter to the federal courts at the last minute — less than four days (two court days) prior to the scheduled execution, despite the fact that Reid has consistently maintained since February 2001 that he did not want any further challenges to his convictions and sentences.[7] In any event, though, it was respondent — not *petitioner* — who was placed at a disadvantage; respondent argued that petitioner should not be afforded *any* opportunity to present live testimony in order to satisfy the burden. But the court allowed petitioner to present live witnesses and exhibits and received all record evidence submitted to it; any time restrictions imposed by the court merely served as an acknowledgment of the practical reality that the execution was imminent and that appeals would be forthcoming.[8]

B. *Deference Was Owed to the Determination of Competency Made By the Tennessee Supreme Court.*

There is yet another reason why it was proper for the district court to deny the proposed next friend's motion for a stay of execution. On April 24, 2003, four days prior to the motion for a stay of execution being filed in federal district court, Reid's attorney on direct appeal moved for a stay of execution in the Tennessee Supreme Court, likewise alleging that Reid is unable to rationally choose among his options because of mental disease, citing *Rees*, 384 U.S. 312, and presenting evidence in support of this allegation. (Attachment 6).[9] In that motion, Reid's attorney

---

[7]In *Harper*, on which petitioner relies, the petition was filed 6 weeks prior to the scheduled execution date as opposed to 3 days prior — the timing chosen by petitioner here.

[8]Indeed, had petitioner been afforded an opportunity to present any and all evidence, without time limitation, the ability to bring this very appeal would have been seriously curtailed.

[9]On April 10, 2003, Reid's attorney filed a petition for a writ of certiorari in the United States Supreme Court along with a motion requesting that the Court recognize in forma pauperis status for Reid, despite the fact that Reid had declined to sign the supporting affidavit. In support of that motion, Reid's attorneys alleged that questions existed concerning Reid's competency. The Court denied that motion on April 21, 2003. *Reid v. Tennessee*, __ S.Ct. __, 2003 WL 1903776 (No.

made similar allegations to those presented in the district court. On April 22, 2003, however, the Tennessee Supreme Court declined to stay Reid's execution. *State v. Reid*, No. M1999-00803-SC-DDT-DD (Tenn. April 22, 2003)(order denying motion for stay of execution) (Attachment 7). The Court noted that Reid has twice been found competent to stand trial, after lengthy hearings, in two of the three capital cases in which he has been sentenced to death, including the determination made in May of 2000. Finding that Reid "has clearly indicated that he has no desire to pursue any post-conviction remedies," and concluding that the reasons he had advanced for that choice were not irrational, the Court determined that Reid was "a responsible person," who could elect to proceed with further appeals as he chooses. The Court determined that the showing made in support of the motion presented "no 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." *Id.*

Under this Court's decision in *Franklin v. Francis*, 144 F.3d 429 (6th Cir. 1998), deference is owed by the federal courts to the Tennessee Supreme Court's decision that Reid is competent to waive his appellate rights. In *Franklin*, the Court vacated a stay of execution where the issuance of the stay was based on the district court's ruling that it was not bound by the state court determination of competency because the state court had not properly followed the competency requirements from *Rees*. *Id.*, 144 F.3d at 432.[10] The Ohio Supreme Court had determined that, while the capital defendant in that case suffered from a mixed personality disorder,

---

02M88)(April 21, 2003).

[10]*Compare Demosthenes v. Baal*, 495 U.S. 731 (1990) (per curiam), in which the Court vacated a stay of execution entered on a "next friend" motion and held that a state court conclusion regarding competency was entitled to a presumption of correctness. Under 28 U.S.C. § 2254(e)(1), such a presumption may only be rebutted upon clear and convincing evidence.

it did not prevent him from understanding his legal position and the options available to him, or from making a rational choice between those options." *Id.*, 144 F.3d at 431. Holding that the state court had properly followed the *Rees* test, which contemplates that a prisoner may suffer from a mental disorder, but still be able to rationally choose between his options of pursuing an appeal or waiving further legal rights, the court concluded:

> Therefore, pursuant to 28 U.S.C. § 2254(d), because the Ohio Supreme Court decision was not contrary to or did not involve an unreasonable application of clearly established federal law, we are bound by the determination of the Ohio Supreme Court that [the condemned inmate] was competent.

Id, 144 F.3d at 433.[11] The same result attaches here. In determining Reid's competency, the Tennessee Supreme Court properly followed the *Rees* standard when it concluded that nothing had been presented to it "to call into doubt Mr. Reid's present capacity to understand his legal position and options or to make a rational choice among these options," and the district court ruled that its decision was neither contrary to, nor involved an unreasonable application of, clearly established federal law. *See* 28 U.S.C. § 2254(d). Accordingly, it was proper for the district court to deny the motion for a stay of execution on this basis as well.

Because, as this Court has held, an infinite desire to thwart the just process of the law is not the only sign of mental competence, "[w]e 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." *West*, 242 F.3d at 343. The Tennessee Supreme Court has determined that Reid is competent to waive further

[11] *See also Franklin v. Francis*, 168 F.3d 261, 262 (6th Cir. 1999) (district court properly determined that the only issue it had jurisdiction to consider was whether the state court used the correct legal standard to determine the prisoner's competence; any new evidence thereon was appropriate for consideration only by the state courts).

appeals of his death sentences. After a thorough face-to-face examination of Reid in open court, the district court has now likewise found that Reid has made a knowing, voluntary, intelligent and rational decision to waive further appeals. In the absence of a basis for the district court to exercise jurisdiction, "[t]he State is entitled to proceed without federal intervention." *Demosthenes*, 495 U.S. at 737.

CONCLUSION

The judgment of the district court denying the motion for stay and for appointment of counsel by the prospective next friend should be affirmed.

Respectfully submitted,

PAUL G. SUMMERS
Attorney General & Reporter

MICHAEL E. MOORE
Solicitor General

GORDON W. SMITH
Associate Solicitor General

AMY L. TARKINGTON
Deputy Attorney General

JOSEPH F. WHALEN
Assistant Attorney General
425 Fifth Avenue North
Nashville, Tennessee 37243
(615) 532-7357

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 facsimile, to Henry Martin, Office of the Federal Public Defender, 810 Broadway, Suite 200, Nashville, Tennessee, 37203, on this, the 28th day of April, 2003.

_____
JOSEPH F. WHALEN
Assistant Attorney General