

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

STATE OF TENNESSEE v. PAUL DENNIS REID, JR.

No. M1999-00803-SC-DDT-DD - Filed April 22, 2003, 2:55 p.m.

MEMORANDUM OPINION AND ORDER

On November 26, 2002, this Court affirmed Paul Dennis Reid's convictions and sentences for the first-degree murders of Sarah Jackson and Steve Hampton at the Captain D's restaurant in Donelson, Tennessee. The Court thereupon set an execution date of April 29, 2003. See State v. Reid, 91 S.W.3d 247 (Tenn. 2002). A petition to rehear was denied on December 19, 2002.

On March 26, 2003, Mr. Reid filed a pro se notice in this Court indicating that he did not intend to pursue his post-conviction remedies. In the notice, Mr. Reid stated:

Please be advised, I elect not to pursue any post-conviction appeals in the Captain D's case No. 97-C-1834. I have meticulously examined all my post-conviction appeal options; I have precisely contemplated all legal strategies; an (sic) I have weighed all the alternatives, for approximately four (4) years, and carefully decided to abandoned (sic) my post-conviction appeals in the Captain D's case No. 97-C-1834.

Additional reasons as to why I elect to discontinue any post-conviction appeals in Captain D's case No. 97-C-1834:

- 1.) I have no confidence, nor belief in the state, or federal, judiciary (sic) system, after, my first trial, 4-19-99.
- 2.) I'm convicted of seven (7) egregious homicides.

Thereafter, on April 10, 2003, Assistant Public Defender Jeffrey A. DeVasher, counsel for Mr. Reid on his direct appeal, filed in the United States Supreme Court a petition for writ of certiorari, along with a motion for order recognizing in forma pauperis status without the filing of an affidavit of indigency. The United States Supreme Court denied this motion on April 21, 2003, and later that same day, Mr. DeVasher filed a motion in this Court requesting a stay of execution. The motion asserts two grounds in support of the request for the stay.

The motion first alleges that denying a stay will deprive Mr. Reid of the right to file a petition for post-conviction relief within one year from the date of this Court's final action. See Tenn. Code Ann. § 40-30-202(a) (1997) (providing one-year from the final action of the state's highest court to seek post-conviction relief). Acknowledging that Mr. Reid has indicated that he does not intend to pursue state-post conviction remedies, Mr. DeVasher nonetheless contends that "without a stay of execution . . . [Mr. Reid] will not have the same amount of time to finally make this decision or reconsider his stated position, as would any other person in custody under a sentence of a court of this state."

Tennessee Code Annotated section 40-30-220(a), provides:

When affirming a conviction and sentence of death on direct appeal, the Tennessee supreme court shall contemporaneously set a date for an execution. Such date shall be no less than four (4) months from the date of the judgment of the Tennessee supreme court.

This provision clearly authorizes this Court to set an execution before the expiration of the one-year post-conviction statute of limitations. Cf. West v. Bell, 242 F.3d 338, 342 (6th Cir. 2001) (stating that the federal habeas statute of limitations "does not give a death-sentenced prisoner a free one-year period in which state execution processes cannot touch him"). This issue is without merit.

The motion next alleges that a stay is necessary so that the case can be remanded to the trial court for an evidentiary hearing to determine whether Mr. Reid has the capacity to appreciate his position and make a rational choice with respect to continuing or abandoning further litigation. See Rees v. Peyton, 384 U.S. 312, 314, 86 S. Ct. 1505, 1506, 16 L. Ed.2d 583 (1966). In support of this ground Mr. DeVasher refers to evidence presented at the penalty phase of this trial and to evidence presented in two subsequent capital cases,¹ indicating that Mr. Reid has brain damage and is mentally ill. Attached to the motion is a letter from Dr. Pamela Auble, a clinical neuropsychologist, who testified at the sentencing phase of Mr. Reid's trial. The letter states that Dr. Auble has reviewed letters recently written to counsel by Mr. Reid reflecting his belief that he is subject to governmental and military surveillance. Based upon these letters, Dr. Auble is of the opinion that Mr. Reid is unable to rationally choose among his legal options because of his mental disease.

In its response to the motion, the State points out that, although Mr. Reid's competency to stand trial was not raised in this case, he asserted claims of incompetence in two subsequent

¹In State v. Paul Dennis Reid, Jr., Montgomery County Circuit Court, Division Three, No. 38887, Tennessee Court of Criminal Appeals No. M2001-02753-CCA-R3-CD, the appellant was convicted, inter alia, of two (2) counts of first degree murder and sentenced to death on each count. In State v. Paul Dennis Reid, Jr., Davidson County Criminal Court, Division Three, No. 97-C-1836, Tennessee Court of Criminal Appeals No. M2003-00539-CCA-R3-DD, the appellant was convicted, inter alia, of three (3) counts of first degree murder and was sentenced to death on each count.

capital cases.² In both cases, after lengthy evidentiary hearings, Mr. Reid was found competent to stand trial. The State contends that the motion does not present any truly new factual assertions to rebut the most recent finding of competence made by the Davidson County Criminal Court in May 2000.

Upon due consideration, we find that this second ground for a stay is also without merit. Mr. Reid has clearly indicated that he has no desire to pursue any post-conviction remedies.³ The reasons given for this choice--that he has lost confidence in the judicial system, and that he has been convicted of seven “egregious” homicides--are certainly not irrational. As the United States Court of Appeals for the Sixth Circuit has observed: “We 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.

Consistent with her testimony at the penalty phase of the trial, Dr. Auble opines in her unsworn letter that Mr. Reid is mentally ill; however, neither the motion nor the letter present any truly 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. In our opinion, the letter of Dr. Auble filed in support of the motion is similar to the materials found inadequate to warrant a stay in West, supra. Mr. Reid is a responsible person. Even at this late hour he may initiate post-conviction proceedings if he so chooses. As the Sixth Circuit recognized, unless an adequate showing is made, the prisoner “is entitled to be free from being dragged about for mental examinations, hearings, and the like, in processes that he has not invoked, even if purportedly for his benefit.” West, 242 F.3d at 342.

Accordingly, the motion for stay of execution is DENIED.

FRANK F. DROWOTA, III,
CHIEF JUSTICE

Concur:

E. Riley Anderson, Janice M. Holder, and William M. Barker, JJ.

Dissent:

Adolpho A. Birch, Jr., J. - See Separate Order

²See footnote 1, supra.

³In addition to his March 26 notice, Mr. Reid filed today in this Court a letter describing Mr. DeVasher’s efforts on his behalf as “a character assassination attack . . . to characterize me as demented.”