

Nos. 96-6652/00-5367

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PHILIP R. WORKMAN,)
)
 Petitioner-Appellant,)
)
 v. (96-6652))
)
 RICKY BELL, Warden, Riverbend Maximum)
 Security Institution,)
)
 Respondent-Appellee.)
)
 -----)
)
 In re: PHILIP R. WORKMAN,)
)
 Movant. (00-5367))

FILED

MAR 21 2001

LEONARD GREEN, Clerk

ORDER

Before: MARTIN, Chief Judge; MERRITT, NELSON, RYAN, BOGGS, NORRIS,
SUHRHEINRICH, SILER, BATCHELDER, DAUGHTREY, MOORE, COLE,
CLAY, and GILMAN, Circuit Judges.

The petitioner is a Tennessee inmate sentenced to death after being found guilty of felony murder. On October 30, 1998, a panel of this court affirmed the district court's denial of his petition for a writ of certiorari. *Workman v. Bell*, 160 F.3d 276 (6th Cir. 1998), *republished at* 178 F.3d 759 (1998), *cert. denied*, 528 U.S. 913, *reh. denied*, 528 U.S. 1040 (1999). The petitioner later moved to reopen his habeas case and for reconsideration of our 1998 decision on the basis of newly discovered evidence. A panel of this court denied that motion on March 31, 2000, and that decision was affirmed by this court sitting en banc. *Workman v. Bell*, 227 F.3d 331 (6th Cir. 2000) (en banc). Our mandate issued on October 4, 2000.


Thereafter, the petitioner filed a motion for recall of the mandate and for a stay of execution pending final disposition of the United States Supreme Court of his petition for a writ of certiorari and a petition for an original writ of habeas corpus. The en banc court granted that motion in an order of January 26, 2001. That order provided that "the stay of execution shall remain in place until the final disposition of the Supreme Court of the actions brought before it by the petitioner." The Supreme Court denied both petitions on February 26, 2001, *Workman v. Bell*, No. 00-7620 (Feb. 26, 2001); *In re Workman*, No. 00-7621 (Feb. 26, 2001). Two days later, the Supreme Court of Tennessee set an execution date of March 30, 2001.

The court now has pending before it the petitioner's motion to declare the execution date void and to enforce this court's January 26, 2001, order staying his execution. The respondent has filed a response opposing that motion. The motion has been circulated to all members of the en banc court. A majority of judges having not voted to grant such relief,

It therefore is **ORDERED** that the motion to declare void the execution date entered by the Supreme Court of Tennessee and to enforce this court's January 26, 2001, stay of execution is denied.*

The mandate shall issue forthwith.

ENTERED BY ORDER OF THE COURT


Clerk

*On March 19, 2001, the petitioner filed a motion to reopen his habeas action and to appoint a special master to investigate the clemency process in Tennessee. He also moved for a stay of execution. Those motions will be addressed in a future order.