

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PHILIP R. WORKMAN,)	
)	
Petitioner-Appellant,)	No. 96-6652
)	00-5367
v.)	
)	
RICKY BELL, WARDEN,)	
)	
Respondent-Appellee.)	

MOTION TO DECLARE VOID
MARCH 30, 2001, EXECUTION DATE AND
TO ENFORCE
THIS COURT'S JANUARY 26, 2001,
ORDER GRANTING STAY OF EXECUTION

1. On January 26, 2001, the *en banc* court entered a stay of execution "until the final disposition of the Supreme Court of the actions brought before it by the petitioner," including a petition for writ of certiorari and a petition for writ of habeas corpus.

2. On February 26, 2001, the United States Supreme Court entered orders denying Philip Workman's petition for writ of certiorari and writ of habeas corpus. See Workman v. Bell, U.S.No. 00-7620; In Re Philip Ray Workman, U.S.No. 00-7621. Under the rules of the United States Supreme Court, however, Philip Workman has 15 days within which to file petitions for rehearing before the

Supreme Court. U.S.S.Ct.R. 44.

3. Given Philip Workman's right to seek rehearing, there has been no "final disposition of the Supreme Court of the actions brought before it by the petitioner," and therefore the January 26, 2001, stay of execution entered by this Court remains in effect, pending the final determination of any rehearing petition.

4. On February 28, 2001, the Tennessee Supreme Court, however, entered an order purporting to set an execution date of March 30, 2001.

5. 28 U.S.C. §2251 provides that the federal courts may issue a stay of execution in a habeas corpus proceeding, and that "After the granting of such a stay, any such proceeding in any State court or by or under the authority of any State shall be void."

6. Accordingly, the Tennessee Supreme Court did not have the authority to set an execution date because: (1) the stay of execution entered by this Court, by its very terms, remains in effect since there has been no "final disposition" of Philip Workman's petitions in the Supreme Court, and (2) at the time the Tennessee Supreme Court purported to set an execution date (on February 28, 2001), the stay entered by this Court was (and remains) in effect, and the Tennessee Supreme Court's action was therefore void under 28 U.S.C. §2251.

7. Accordingly, this Court should enforce its January 26, 2001, *en banc*

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order granting a stay of execution, declares that it remains in effect pending a final disposition in the Supreme Court (viz. the running of the twenty-five (25) days in which to file a rehearing petition and final determination of any petition to rehear), and hold that the Tennessee Supreme Court's February 28, 2001, order is illegal, void, and unenforceable.

CONCLUSION

WHEREFORE, the motion should be granted.

Respectfully submitted,

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