

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

PHILIP RAY WORKMAN v. STATE OF TENNESSEE

No. M1999-01334-SC-DPE-PD

FILED

January 23, 2001

Cecil Crowson, Jr.
Appellate Court Clerk

DISSENTING ORDER

Philip Ray Workman has moved this Court to stay execution of the death sentence imposed upon him in order to give the United States Supreme Court time to review his pending petition for the writ of certiorari. Workman has raised questions concerning whether recently discovered evidence may show that he did not kill Memphis Police Lieutenant Ronald Oliver and whether Harold Davis, the sole witness who testified that he observed Workman shoot Oliver, committed perjury. See generally Workman v. Bell, 227 F.3d 331 (6th Cir. 2000). In September 2000, the Sixth Circuit of the United States Court of Appeals, sitting en banc, announced that it was divided on the question whether the district court should hold an evidentiary hearing to explore Workman's claims; thus, a prior panel decision denying a hearing was automatically reinstated. Workman subsequently petitioned the United States Supreme Court for certiorari to the Sixth Circuit, and this petition is now pending before that Court.

According to Workman, however, the next conference date listed on the United States Supreme Court's calendar is February 16, 2001, almost a month after Workman's scheduled execution date.¹ Thus, the Supreme Court will apparently be unable to review his petition in its normal course of business. I see no reason why we should prevent the United States Supreme Court from considering Workman's petition in an unhurried fashion. Thus, I find an extension of time in deference to the United States Supreme Court to be more compatible with the interests of justice. See Wainwright v. Adams, 466 U.S. 964, 965, 104 S. Ct. 2183, 2184, 80 L. Ed. 2d 809 (1984) (Marshall, J., dissenting) (noting that "haste and confusion surrounding [a decision to vacate a stay of execution] is degrading to our role as judges"); see also Autry v. Estelle, 464 U.S. 1, 3, 104 S. Ct. 20, 23, 78 L.Ed.2d 1 (1983) (Stevens, J., dissenting) (criticizing the Court's decision to deny a stay of execution pending filing and disposition of the defendant's petition for certiorari).

Moreover, in Workman v. State, 22 S.W.3d 807 (Tenn. 2000), I addressed Workman's request for a recommendation of commutation, and I certified to Governor Sundquist that Workman's death sentence should be commuted to life in prison. I concluded at that time that I could not agree with the majority's decision to set an execution date for Workman. I continue to

¹Workman relies upon the schedule posted on the Supreme Court's webpage, at www.supremecourtus.gov/calendar/sccalendar.pdf, for this date.

adhere to the views I expressed in my previous Order, and I continue to dissent from the majority's decision to set an execution date. A fortiori, I cannot concur in the majority's refusal to stay execution for even a brief time.

For the foregoing reasons, I would grant Workman's motion for a stay of execution so that the United States Supreme Court may have sufficient time to review Workman's petition for certiorari to the Sixth Circuit in its normal course of business. Therefore, I dissent from the order entered by the majority.

ADOLPHO A. BIRCH, JR., JUSTICE