

**IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE**

PHILIP RAY WORKMAN,)
)
 Movant/Defendant,)
)
 v.)
)
 STATE OF TENNESSEE,)
)
 _____ **Respondent.**)

S.Ct. No. M1999-01334-SC-DPE-PD

FILED

January 23, 2001

**Cecil Crowson, Jr.
Appellate Court Clerk**

RESPONSE TO MOTION FOR STAY OF EXECUTION

Workman asks this Court to stay its October 5, 2000, order resetting the execution date in this case for January 31, 2001. In support thereof, he contends that the United States Supreme Court does not have adequate time to consider and rule upon his petition for writ of certiorari. His motion should be denied for two reasons. First, petitioner informed the United States Supreme Court of the January 31, 2001, execution date upon the filing of his certiorari petition, and the State filed its response to Workman's petition on January 19, 2001, in accordance with the schedule established by the Clerk of that Court. If the Supreme Court should determine that it has insufficient time to consider and rule upon Workman's petition prior to January 31, 2001, it may, of course, issue its own order staying his execution.¹ This Court should not be asked to presume to manage the High Court's own procedures for addressing capital cases with pending execution dates.

¹ A motion seeking a stay of execution pending disposition of the petition for writ of certiorari was filed by petitioner in the United States Court of Appeals for the Sixth Circuit on December 14, 2000, and remains pending.

Second, on September 5, 2000, following the en banc decision of the United States Court of Appeals for the Sixth Circuit rejecting Workman's motion to reopen his federal habeas case, the State asked this Court to reset the execution date.² On September 15, 2000, in his response to that request, Workman signaled his intent to file a petition for writ of certiorari. In setting a January 31, 2001, execution date by order entered October 5, 2000, this Court afforded Workman more than ample time in which to pursue the remedies that he considered available to him, including any certiorari petition. Nevertheless, Workman waited until December 2, 2000, an additional two months from the date of this Court's order, and three months from the date of the Sixth Circuit's decision, to file his petition for writ of certiorari in the United States Supreme Court.³ He should not now be heard to complain that the Supreme Court may have inadequate time to consider such petition; nor should he be allowed to parlay such a complaint into further delay.

Respectfully submitted,

PAUL G. SUMMERS
Attorney General & Reporter
B.P.R. No. 6285

² Prior to the Sixth Circuit's issuance of a stay on April 4, 2000, the execution had been scheduled for April 6, 2000.

³ His petition was initially rejected as improperly filed. The petition was resubmitted on December 14, 2000, and docketed in the Supreme Court on December 22, 2000.

MICHAEL E. MOORE
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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing, with attachments, was served on the defendant by delivering a copy of same, in-hand, to Christopher M. Minton, Esq., Office of the Post-Conviction Defender, 530 Church Street, Suite 600, Nashville, Tennessee, 37243, on this the ____ day of January, 2001.

JOSEPH F. WHALEN
Assistant Attorney General

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 Movant.)

AFFIDAVIT

I, Joseph F. Whalen, Assistant Attorney General, do hereby swear and affirm that the facts contained in the attached Response to Motion for Stay of Execution are true and accurate to the best of my knowledge and belief.

JOSEPH F. WHALEN
Assistant Attorney General

Sworn to and subscribed before me
this _____ day of January, 2001.

NOTARY PUBLIC

My Commission Expires _____