

IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE

STATE OF TENNESSEE V. GAILE K. OWENS

Criminal Court for Shelby County  
No. 85-01174

**FILED**  
APR 19 2010  
Clerk of the Courts

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No. M1988-00125-SC-DPE-DD - Filed: April 19, 2010

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**ORDER**

On December 8, 2009, the State filed a motion to set an execution date for Gaile K. Owens. The State alleged that Ms. Owens had completed the standard three-tier appeals process and that an execution date should therefore be set in accordance with Tenn. S. Ct. R. 12.4(A).

On February 5, 2010, Ms. Owens filed a response to the State's motion in which she requested this Court either to vacate her death sentence and modify it to life or to issue a certificate of commutation under Tenn. Code Ann. § 40-27-106 (2006). She requests this extraordinary relief on four grounds. First, she points out that she is the only inmate in Tennessee who has received a death sentence after agreeing to accept a life sentence. Second, she asserts that, because of the failures of trial counsel and post-conviction counsel, no court or jury heard evidence establishing that she was a battered spouse and, therefore, they were prevented from considering in mitigation that she had been abused by the victim, her husband. Third, she requests this Court to "correct its earlier erroneous ruling" regarding a Brady v. Maryland, 373 U.S. 83 (1963), violation involving love letters between the victim and another woman. Fourth, Ms. Owens insists that her death sentence is disproportionate to the sentences of other similarly situated battered women who have been convicted for involvement in the murders of their husbands.

On February 5, 2010, the National Clearinghouse for the Defense of Battered Women and the Tennessee Coalition against Domestic and Sexual Violence filed a Motion for Leave to File a Statement of Amici Curiae in Support of Gaile Owens' Motion for a Certification of Commutation. On February 9, 2010, the Tennessee Association of Criminal Defense Lawyers filed a Motion for Leave to File Amicus Curiae Statement. On February 16, 2010, the State responded to Ms. Owens' request for modification of her sentence or for a certificate of commutation. The State asserted that this Court lacks jurisdiction to modify

Ms. Owens' death sentence and that there are no extenuating circumstances that justify the issuance of a certificate of commutation in accordance with Tenn. Code Ann. § 40-27-106.

We grant the motions of the National Clearinghouse for the Defense of Battered Women, the Tennessee Coalition against Domestic and Sexual Violence, and the Tennessee Association of Criminal Defense Lawyers to file statements as amici curiae.

After carefully considering Ms. Owens' request that we modify her sentence to life, we respectfully decline to do so because this Court does not have the authority, under Tenn. S. Ct. R. 12.4(A) or any state statute or court precedent, to grant this relief at this stage of the proceeding. We also note that most of the legal arguments advanced by Ms. Owens in support of her request for a modification of her sentence have been previously considered and adjudicated by this Court during Ms. Owens' appeal as of right or by the state and federal courts during the extensive collateral reviews of her conviction and sentence. See State v. Porterfield, 746 S.W.2d 441 (Tenn. 1988); Owens v. State, 13 S.W.3d 742 (Tenn. Crim. App. 1999); Owens v. Guida, 549 F.3d 399 (6th Cir. 2008).

We have also carefully considered Ms. Owens' request for a certificate of commutation in accordance with Tenn. Code Ann. § 40-27-106. This extraordinary statutory relief is available only when the facts in the record, alone or in combination with new undisputed facts, clearly demonstrate "there are extenuating circumstances attending the case, and that the punishment ought to be commuted. . ." Tenn. Code Ann. § 40-27-106; see also Workman v. State, 22 S.W.3d 807, 808 (Tenn. 2000).

In determining whether to issue a certificate of commutation under Tenn. Code Ann. § 40-27-106, this Court may not address extra-judicial facts challenging the accuracy of the jury's verdict or the credibility of the evidence supporting the inmate's conviction. Workman v. State, 22 S.W.3d at 808. Based on our review of the record and the papers submitted both in support of and in opposition to Ms. Owens' request for a certificate of commutation, we have determined that the composition of the record upon which the jury rendered its verdict and upon which this Court and other courts have predicated their decisions has been influenced significantly by considered tactical decisions made by Ms. Owens and her counsel. We have also determined that neither the evidence in this record nor the facts now brought forward by Ms. Owens demonstrate the sort of extenuating circumstances that would prompt us to issue a certificate of commutation. Accordingly, Ms. Owens' request for a certificate of commutation under Tenn. Code Ann. § 40-27-106 is respectfully denied.

The Governor is not constrained by the same evidentiary limitations that guide our decisions under Tenn. Code Ann. § 40-27-106. Workman v. State, 22 S.W.3d at 808-09. Accordingly, our decision to decline to issue a certificate of commutation does not foreclose

or affect the Governor's exercise of his clemency power under Article III, Section 6 of the Constitution of Tennessee.

Having found no basis for granting Ms. Owens the extraordinary relief she requests, we have determined that Ms. Owens and the amici curiae have failed to present any viable basis for denying the State's motion to set an execution date. It is, therefore, ordered that the Warden of the Riverbend Maximum Security Institution, or his designee, shall execute the sentence of death as provided by law at 10:00 p.m. on the 28th day of September, 2010, or as soon as possible thereafter within the following twenty-four hours, unless otherwise ordered by the Court or other appropriate authority.

Counsel for Ms. Owens shall provide a copy of any order staying execution of this order to the Office of the Clerk of the Appellate Court in Nashville. The Clerk shall expeditiously furnish a copy of any order of stay to the Warden of the Riverbend Maximum Security Institution.

PER CURIAM