

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

STATE OF TENNESSEE v. PAUL DENNIS REID, JR.

No. M2001-02753-SC-DDT-DD - Filed: June 26, 2006

AND

**PAUL DENNIS REID, JR., by and through LINDA MARTINIANO v.
STATE OF TENNESSEE**

No. M2006-01294-SC-28S-PD - Filed: June 26, 2006

ORDER

On May 24, 2005, this Court affirmed the two convictions of first degree murder and two sentences of death Paul Dennis Reid, Jr., received for murders he committed in Montgomery County. State v. Reid, 164 S.W.3d 286 (Tenn. 2005). Pursuant to Tennessee Code Annotated section 40-30-120(a) (2003), this Court set an execution date of October 5, 2005. By order filed September 26, 2005, this Court reset the execution for June 28, 2006.

On May 4, 2006, this Court issued an opinion in Daryl Keith Holton v. State and Paul Dennis Reid, Jr. v. State, Nos. M2005-01870-SC-S10-PD, M2005-02398-SC-PD, ___ S.W.3d ___, 2003 WL 24314330 (Tenn. May 4, 2006), holding that the trial court lacked authority to consider a petition for post-conviction relief filed by the Post-Conviction Defender on behalf of Reid where the petition was not signed or verified by Reid and where the Defender failed to establish a “next friend” basis upon which to proceed. By order filed June 22, 2006, this Court denied Reid’s petition to rehear the opinion.

On May 23, 2006, the Post-Conviction Defender filed a motion for stay of execution and appointment of counsel in connection with a “next friend” petition for post-conviction relief filed on behalf of Reid by his sister, Linda Martiniano, Assistant Post-Conviction Defender Kelly Gleason, and Connie Westfall, an investigator with the Defender’s office. On June 13, 2006, the

Montgomery County Circuit Court dismissed the petition and denied the motion for stay of execution and appointment of counsel, finding that the petition and accompanying affidavits failed to make a threshold showing of incompetence under Holton v. State and Reid v. State. A notice of appeal from the trial court's ruling was filed on June 20, 2006. The following day, the trial court denied a subsequent motion filed by the Defender on Reid's behalf, requesting the court to stay the execution pending the appeal of right from the dismissal of the post-conviction petition.

On June 22, 2006, Linda Martiniano, as putative next friend for Reid, filed a motion requesting this Court to stay the execution and requesting an expedited hearing on the matter. The motion asserts that the appeal from the dismissal of the post-conviction petition involves issues of first impression and that a stay of execution is necessary to ensure sufficient time for adequate and reflective briefing. The State of Tennessee has filed a response in opposition to the motion for stay of execution.

Concurrent with the filing of this motion, Martiniano filed in the Court of Criminal Appeals a motion for stay of execution pending the outcome of the appeal in that court from the dismissal of the post-conviction petition. On June 23, 2006, the Court of Criminal Appeals denied the motion for stay of execution. The court concluded that, because the appeal before it is not from the denial of a petition deemed to have been properly filed under the Post-Conviction Procedure Act, the court is without authority to grant a stay of the execution date set by this Court.

Martiniano then filed in this Court a Motion for Review of the Court of Criminal Appeals' denial of stay of execution. The Motion for Review argues that the statute and rules in place for post-conviction petitioners should also apply to petitions filed by a next friend, and that under those rules, the trial court and Court of Criminal Appeals have the authority to issue a stay of execution upon the filing of a post-conviction petition. Martiniano also filed a "Motion to Supplement the Motion for Stay of Execution with an Appendix of Attachments to the Court of Criminal Appeals Stay Motion, which was Attached in Whole as Appendix to Motion for Stay."

The State argues that, because the trial court dismissed the post-conviction petition for failure to satisfy the requirements for next friend status, there is no post-conviction petition pending and, therefore, Martiniano does not have standing to seek a stay of execution. The State next contends that the delay in seeking review of the trial court's order justifies denial of the request for a stay of execution.¹ Finally, the State asserts that the trial court's action in this case is consistent with decisions of this Court and does not justify a stay of execution.

Because an appeal from the dismissal of the post-conviction petition is pending, we decline to conclude that Martiniano lacks standing to seek a stay of execution. While we agree with the

¹ Despite the imminence of the June 28, 2006, execution date, Martiniano and the Post-Conviction Defender did not file the "next friend" post-conviction petition until nineteen days after this Court's decision in Holton and Reid. After dismissal of the petition, a week passed before a notice of appeal was filed.

State that unnecessary delay has occurred in pursuing this matter, we nevertheless decline to conclude that such delay, standing alone, justifies denial of the request for a stay of execution. Cf. Tenn. Code Ann. 40-30-120(f) (stating that the “court may consider the last-minute nature of an application to stay execution by resolving against the petitioner any doubts and uncertainties as to the sufficiency of the petitioner’s submission”). Recognizing that an appeal in this matter is currently pending in the Court of Criminal Appeals, we note in relation to the merits of the issues raised that we have released today an opinion in Paul Dennis Reid, Jr. v. State, No. M2005-00260-SC-S09-PC (Tenn. June 26, 2006), holding that the standard for mental incompetence adopted in State v. Nix, 40 S.W.3d 459 (Tenn. 2001), applies to a competency determination during post-conviction proceedings. We conclude in this case that Martiniano has an insufficient likelihood of success on the merits of the post-conviction appeal to warrant a stay of execution.

In conclusion, the motion to supplement is GRANTED, the motion for review is GRANTED, and the motion to stay the execution is DENIED.

IT IS SO ORDERED.

PER CURIAM

Justice Adolpho A. Birch Jr. – Concurring in Part/Dissenting in Part