

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE

FILED

01/31/2018

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. NICHOLAS TODD SUTTON

Circuit Court for Morgan County
No. 7555

No. E2000-00712-SC-DDT-DD

ORDER

On December 17, 2013, this Court set the execution date for Nicholas Todd Sutton for November 17, 2015. On April 10, 2015, the Court vacated the order setting an execution date due to an appeal of a declaratory judgment action challenging the constitutionality of Tennessee's lethal injection protocol. The April 10, 2015 Order stated that upon final disposition of the appeal in the declaratory judgment action, the Court would exercise its authority to *sua sponte* set a new date of execution. *See* Tenn. Sup. Ct. R. 12.4(E) (authorizing the Court to *sua sponte* set execution dates in certain circumstances). Ultimately, the chancery court held the lethal injection protocol constitutional, and this Court affirmed the dismissal of the claims made in that action. *West v. Schofield*, 519 S.W.3d 550 (2017). On January 11, 2018, the State filed a notice that the United States Supreme Court had denied certiorari in the two petitions seeking review of this Court's decision. *See Stephen Michael West, et al. v. Tony Parker, et al.*, 138 S.Ct. 476 (Nov. 27, 2017), and *Abdur'Rahman v. Parker*, No. 17-6068, 2018 WL 311479 (U.S. Jan. 8, 2018). On January 19, 2018, Mr. Sutton filed a Motion to Defer the Setting of an Execution Date because he has pending in the trial court a motion to reopen his post-conviction proceedings and because he intends to challenge the constitutionality of a newly-adopted lethal injection protocol. On January 29, 2018, the State filed a response in opposition to the motion. On January 31, 2018, Mr. Sutton filed a reply in response to the State's response, reiterating his reasons why the Court should defer setting an execution date.

After due consideration, the Court finds that Mr. Sutton has presented no legal basis for deferring the setting of an execution date. *See* Tenn. Sup. Ct. R. 12.4 (E) (stating that the Court will not delay setting an execution date pending resolution of collateral litigation in state court "unless the prisoner can prove a likelihood of success on the merits in that litigation"). The Motion to Defer the Setting of an Execution Date is, therefore, denied.

PER CURIAM