

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

STATE OF TENNESSEE,)
)
Movant,)
)
v.)
)
GARY WAYNE SUTTON,)
)
Defendant.)



CASE No. E1997-0096-SC-DDT-DD
Blount County
C-6669

MOTION TO SET EXECUTION DATE

As Tenn. Sup. Ct. R. 12.4(A) requires the State to do when a death-row prisoner has completed the standard three-tier appeals process, the State of Tennessee moves this Court to set an execution date for Gary Wayne Sutton. In support of this motion, the State relies on the following:

1. Sutton and co-defendant James Henderson Dellinger were convicted by a Blount County jury for the 1992 first-degree murder of Tommy Griffin. Following a sentencing hearing, the jury sentenced both defendants to death. This Court affirmed the judgments, and the United States Supreme Court denied a petition for writ of certiorari. *State v. Sutton*, 79 S.W.3d 458 (Tenn. 2002), cert. denied, 537 U.S. 1090 (2002).

2. Sutton filed a petition for post-conviction relief in the trial court in March 2003. Following a hearing, the trial court denied relief. The Court of Criminal Appeals affirmed the judgment, and this Court denied a discretionary appeal. *Sutton v. State*, No. E2004-02305-CCA-R3-PD, 2006 WL 1472542 (Tenn. Crim. App. May 30, 2006), *perm. app. denied* (Tenn. Oct. 2, 2006).

3. Sutton filed a petition for writ of habeas corpus in the United States District Court for the Eastern District of Tennessee in May 2007. On March 30, 2011, the district court granted the Warden's motion for summary judgment and dismissed the habeas petition. The United States Court of Appeals for the Sixth Circuit affirmed the district court's judgment denying habeas relief. *Sutton v. Carpenter*, 617 Fed. Appx. 434 (6th Cir. June, 23, 2015). The United States Supreme Court denied a petition for writ of certiorari on March 28, 2016. *Sutton v. Westbrook*, 136 S.Ct. 1494 (2016). Sutton did not file a petition for rehearing from the denial of certiorari.

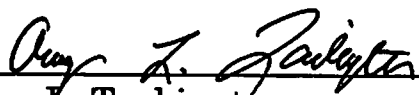
4. Sutton has completed the standard three-tier appeals process, making the setting of an execution date appropriate. See Rule 12.4(A). There are no current judicial or executive orders staying defendant's execution or granting a reprieve.

This Court should set an execution date in accordance with the judgment of the Circuit Court of Blount County, Tennessee.

Respectfully submitted,

HERBERT H. SLATERY III
Attorney General & Reporter

ANDRÉE SOPHIA BLUMSTEIN
Solicitor General



Amy L. Tarkington
Associate Solicitor General
Attorney of Record
P. O. Box 20207
Nashville, Tennessee 37202
Phone: (615) 741-2216
Fax: (615) 741-2009
Amy.Tarkington@ag.tn.gov

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Motion was forwarded by United States mail, first-class postage prepaid, on the ~~20th~~ day of September, 2019, to the following:

Stephen M. Kissinger, Assistant Federal Community Defender
Susanne Bales, Assistant Federal Community Defender
Federal Defender Services of Eastern, Tennessee, Inc.
800 S. Gay Street, Suite 2400
Knoxville, TN 37929

Michael L. Flynn
District Attorney General
5th Judicial District
942 E Lamar Alexander Parkway
Maryville, TN 37804-5002

The undersigned attorney of record prefers to be notified of any orders or opinions of the Court by e-mail at Amy.Tarkington@ag.tn.gov.



Amy L. Tarkington
Associate Solicitor General