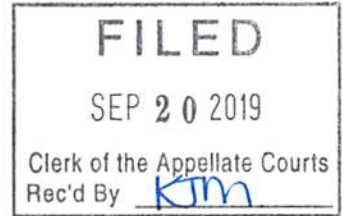


IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE



STATE OF TENNESSEE,)
)
Movant,)
)
v.)
)
Oscar Franklin Smith)
)
Defendant.)

Case No. M2016-01869-SC-R11-PD
Davidson County
89-F-1793

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 Oscar Franklin Smith. In support of this motion, the State relies on the following:

1. Smith was convicted for the 1989 triple murders of his estranged wife Judy Lynn Smith, and her two sons by a previous marriage, Chad and Jason Burnett. Following a jury verdict, the trial court sentenced Smith to death for all three murder convictions. Smith's convictions and sentences were affirmed by this Court on direct appeal, and the United States Supreme Court denied a petition for writ

of certiorari. *State v. Smith*, 868 S.W.2d 561 (Tenn. 1993) (reh'g denied, Jan. 5, 1994), *cert. denied*, *Smith v. Tennessee*, 513 U.S. 960 (1994).

2. Smith filed a petition for post-conviction relief in the trial court, which was denied following an evidentiary hearing. The Court of Criminal Appeals affirmed the judgment, and this Court denied discretionary review. *Smith v. State*, No. 01C01-9702-CR-00048, 1998 WL 345353 (Tenn. Crim. App. June 30, 1998), *perm. app. denied*, (Tenn. Jan. 25, 1999). The United States Supreme Court also denied review. *Smith v. Tennessee*, 527 U.S. 1026 (1999).

3. Smith filed a petition for writ of habeas corpus in the United States District Court for the Middle District of Tennessee but was denied relief. *Smith v. Bell*, 2005 WL 2416504 (M.D. Tenn. Sept. 30, 2005). The United States Court of Appeals for the Sixth Circuit affirmed the denial of relief, but the United States Supreme Court, on certiorari review, vacated the judgment and remanded for further consideration in light of *Martinez v. Ryan*, 566 U.S. 1 (2012). *Smith v. Bell*, 381 Fed. Appx. 547, 2010 WL 2545521 (6th Cir. 2010); *Smith v. Colson*, 566 U.S. 901 (2012); reh'g denied, 566 U.S. 1005 (2012). The district court again denied relief on remand and denied a certificate of appealability; the Sixth Circuit affirmed that denial. *Smith v. Mays*, 2018 WL 7247244 (6th Cir. Aug. 22, 2018). The Supreme Court denied

a petition for writ of certiorari on June 10, 2019. *Smith v. Mays*, 139 S.Ct. 2693 (2019). Smith did not file a petition for rehearing.

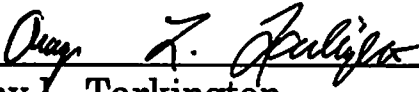
4. Smith has thus completed the standard three-tier appeals process, making the setting of an execution date appropriate. *See* Rule 12.4(A). There are no current judicial or executive orders staying defendant's execution or granting a reprieve.

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

Respectfully submitted,

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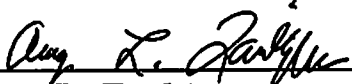
CERTIFICATE OF SERVICE

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:

Kelley J. Henry, Assistant Federal Public Defender
Office of the Federal Public Defender
810 Broadway, Suite 200
Nashville, TN 37203

Glenn R. Funk
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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