

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

ORIGINAL

2007 SEP 24 AM 9:40

APPELLATE COURT CLERK
NASHVILLE

IN RE: EDWARD JEROME)
HARBISON) SHELBY COUNTY
) S.Ct. No.
) M1986-00093-SC-OT-DD

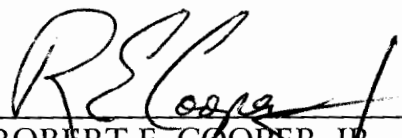
MOTION TO VACATE ORDER SETTING EXECUTION DATE

By order dated May 22, 2007, this Court directed the Warden of the Riverbend Maximum Security Institution, or his designee, to execute Edward Jerome Harbison's sentence of death on September 26, 2007. Thereafter, by order dated September 19, 2007, [Exh. A], the United States District Court for the Middle District of Tennessee enjoined the Warden from executing Harbison under the Tennessee Department of Correction's "Execution Procedures for Lethal Injection" after having found that those procedures violate the Eighth and Fourteenth Amendments to the Constitution of the United States. *Harbison v. Little*, Case No. 3:06-1206 (M.D. Tenn. 2007).

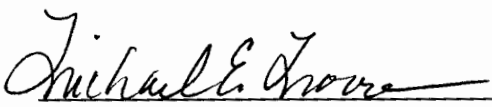
By letter dated September 21, 2007, [Exh. B], the Commissioner of the Tennessee Department of Correction ("TDOC") has represented to the undersigned that additional time is needed to determine what course of action the Department will take in response to the injunction in *Harbison v. Little*, and that, in light of that injunction, the Department will not be in a position to go forward with the execution of Mr. Harbison on September 26, 2007. Accordingly, the State of Tennessee moves this Court for an

order vacating its earlier order setting Mr. Harbison's execution date for September 26, 2007.

Respectfully submitted,



ROBERT E. COOPER, JR.
Attorney General & Reporter



MICHAEL E. MOORE
Solicitor General

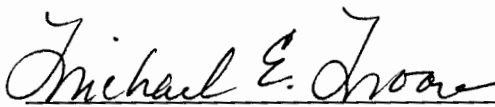
CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been sent via fax and by first-class mail, postage prepaid, to:

Dana C. Hansen Chavis
Federal Defender Services of
Eastern Tennessee, Inc.
530 S. Gay Street, Suite 900
Knoxville, TN 37902

Donald Dawson
Tennessee Post-Conviction Defender
530 Church Street, Suite 600
Nashville, TN 37243-0001

on this 24th day of September, 2007.



MICHAEL E. MOORE
Solicitor General

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

EDWARD JEROME HARBISON,)	
)	
Plaintiff,)	
)	
v.)	Civil No. 3:06-1206
)	Judge Trauger
GEORGE LITTLE, in his official capacity as)	
Tennessee's Commissioner of Correction, <i>et al.</i> ,)	
)	
Defendants.)	

ORDER

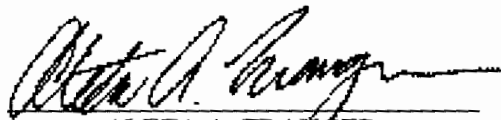
For the reasons expressed in the accompanying Memorandum, it is hereby **ORDERED** that the defendants are **ENJOINED** from executing the plaintiff, Edward Jerome Harbison, under the current Execution Procedures for Lethal Injection (Defendant's Ex. 8), as this court has found those procedures violative of the Eighth Amendment to the Constitution of the United States, made enforceable against the states under the Fourteenth Amendment to the Constitution of the United States. **JUDGMENT** is hereby entered in favor of the plaintiff, Edward Jerome Harbison.

A stay of the execution of Mr. Harbison, presently scheduled for September 26, 2007, does not hereby issue. The Amended Complaint (Docket No. 63) does not request a stay. Moreover, a stay is not authorized, given the terms of Tennessee Code Annotated § 40-23-114(d), which provides, in part:

In any case in which an execution method is declared unconstitutional, the death sentence shall remain in force until the sentence can be lawfully executed by any valid method of execution.

It is so **ORDERED**.

Enter this 19th day of September 2007.



 ALETA A. TRAUGER
 U.S. District Judge

Exhibit B

PHIL BREDESEN
GOVERNOR



GEORGE M. LITTLE
COMMISSIONER

STATE OF TENNESSEE
DEPARTMENT OF CORRECTION
SIXTH FLOOR, RACHEL JACKSON BUILDING
320 SIXTH AVENUE NORTH
NASHVILLE, TENNESSEE 37243-0465
Office (615) 741-1000 • FAX (615) 532-8281

September 21, 2007

The Honorable Robert E. Cooper, Jr.
Attorney General & Reporter
425 Fifth Avenue North
P.O. Box 20207
Nashville, TN 37202-0207

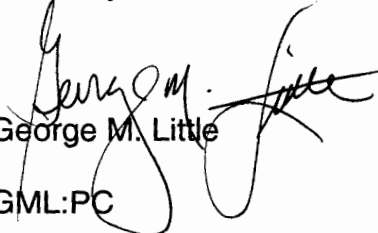
Dear General Cooper:

REGARDING: Edward Jerome Harbison v. George Little, et al., U.S. Dist.
Court, M.D. TN, No. 3:06-1206

I have carefully reviewed the September 19 Order of the court in the above-referenced case. In light of the injunction that has been issued, the Department will not be in a position to go forward with the execution of Mr. Harbison on September 26, 2007. Additional time is needed to determine what course of action the Department will take in response to the Court's Order. As a result, I request that you seek an order from the Tennessee Supreme Court resetting the execution for a later date.

Thank you for your assistance in this matter.

Sincerely,


George M. Little
GML:PC