

IN THE SUPREME COURT OF TENNESSEE

STEPHEN MICHAEL WEST,
Plaintiff -Appellants
v.
GAYLE RAY, in her official capacity as
Tennessee's Commissioner of
Correction, et al
Defendants-Appellees

No. M2010-02276-SC-RDM-CV
Tennessee Court of Appeals
No. M2010-02275-COA-R9-CV
Davidson County Chancery Court
No.10-1675-I

M2010-02275-SC-R11-CV

DEATH PENALTY CASE
EXECUTION SCHEDULED:
November 9, 2010 at 10 p.m.

APPLICATION FOR PERMISSION TO APPEAL
FROM DENIAL OF RULE 9 APPLICATION

Comes now Plaintiff-Appellant, Stephen Michael West, and respectfully
requests that the Court treat his TENN.R.APP.P. 48 request to assume jurisdiction
as a TENN.R.APP.P. 11 application for permission to appeal from denial of a RULE
9 application. In support hereof, Mr. West states:

- 1. On November 2, 2010, Mr. West filed a RULE 9 motion with the Tennessee
Court of Appeals and a RULE 48 motion with this Court.
2. On November 3, 2010, before this Court determined whether it would
assume jurisdiction from the Court of Appeals, the Court of Appeals issued
an order. The Court held it did not have jurisdiction to grant injunctive

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relief and, accordingly, it denied permission to appeal.

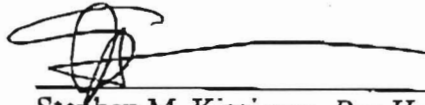
3. As both lower courts have determined they lack jurisdiction to grant Mr. West the injunctive relief he requested, this Court is his only available remedy.
4. This case presents issues of great importance: the jurisdiction of the lower courts to grant injunctive relief and Mr. West's right be free from a cruel and unusual punishment. RULE 11 review is warranted.
5. Given the very short time frame within which Mr. West may act, he requests this Court treat his RULE 48 request as a RULE 11 application for permission to appeal from denial of RULE 9 application. TENN.R.APP.P 9(c). He incorporates all the reasons contained within his RULE 48 Request as reasons to grant review under RULE 11.
6. Mr. West further requests the Court treat his Merits Brief, submitted concurrently with his RULE 48 request, as a Merits Brief in conjunction with RULE 11. For all the reasons set forth in that brief, relief should be granted.
7. Mr. West maintains the alternative request for relief contained with his RULE 48 request; that the Court consider the pleadings before it as a motion to vacate or modify its order scheduling Mr. West's execution.

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Respectfully submitted,

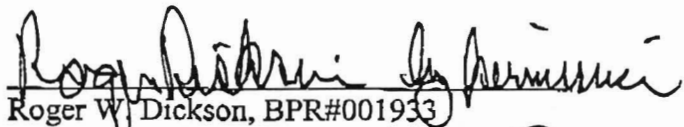
FEDERAL DEFENDER SERVICES
OF EASTERN TENNESSEE, INC.

BY:



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing this Application for Permission to Appeal Denial of Rule 9 Appeal was sent via email and U.S. Mail, postage prepaid, in accordance with TENN. R. APP. P. 20 to:

Mark A. Hudson
Senior Counsel
Office of Attorney General
425 Fifth Avenue North
P. O. Box 20207
Nashville, TN 37243
Mark.A.Hudson@state.tn.us

this the 3rd day of November, 2010.



Stephen M. Kissinger

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IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

FILED

NOV 03 2010

STEPHEN MICHAEL WEST v. GAYLE RAY, IN HER
CAPACITY AS TENNESSEE'S COMMISSIONER OF
CORRECTION, ET AL.

Clerk of the Courts

Chancery Court for Davidson County
No. 10-1675-I

No. M2010-02275-COA-R9-CV

ORDER

Stephen Michael West has filed a Tenn. R. App. P. 9 application for permission to appeal from an order entered by the Chancery Court for Davidson County declining to issue a temporary injunction prohibiting the defendants from carrying out his execution using the current lethal injection protocol. Mr. West is scheduled to be executed by lethal injection on November 9, 2010, pursuant to a July 15, 2010 order of the Tennessee Supreme Court.

Mr. West filed the current action for declaratory and injunction relief asserting that the current lethal injection protocol violates the Eighth and Fourteenth Amendments to the United States Constitution and Art. 1, §14 of the Tennessee Constitution. On October 25, 2010, Mr. West filed a motion for temporary injunction seeking to enjoin the defendants from carrying out his execution by means of the lethal injection protocol during the pendency of his lawsuit challenging that protocol. The trial court denied the request for a temporary injunction based on the Tennessee Supreme Court's decision in *Coe v. Sundquist*, No. M2000-00897-SC-R9-CV (Tenn. April 19, 2000) (order vacating injunction). Pursuant to *Coe*, neither the trial court nor this court has jurisdiction under the declaratory judgment statutes to supersede a valid order of the Tennessee Supreme Court. Accordingly, we concur with the trial court's decision that it lacked jurisdiction to grant the temporary injunction requested by Mr. West. This court also lacks authority to enjoin the execution which has been established by the Tennessee Supreme Court. To grant the Rule 9 application would, in these circumstances, be a fruitless gesture since we cannot grant the relief requested. We therefore deny the application for permission to appeal.

It is, therefore, ordered that the application for permission to appeal be denied. The motion to expedite the appeal is denied as moot. The costs are taxed to Stephen Michael West.

PER CURIAM