

IN THE SUPREME COURT OF TENNESSEE  
AT  
KNOXVILLE

**STEPHEN MICHAEL WEST v. STATE OF TENNESSEE**

**Circuit Court for Union County  
No. 629**

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**No. E2010-02258-SC-R11-PD - Filed: November 5, 2010**

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**ORDER**

On July 15, 2010, this Court set the execution of Stephen Michael West for 10 p.m. on November 9, 2010. Subsequently, Mr. West filed a motion to re-open his post-conviction proceeding in the Circuit Court for Union County, which was denied by the post-conviction trial court. On November 3, 2010, the Court of Criminal Appeals denied Mr. West's application for permission to appeal from the trial court's order. On November 3, 2010, Mr. West filed in this Court an application under Rule 11 of the Tennessee Rules of Appellate Procedure seeking permission to appeal the decision of the Court of Criminal Appeals. On November 4, 2010, Mr. West filed a Motion for Stay of Execution to allow this Court to consider the issues raised in his application and to permit the federal courts to consider cases filed in those courts by Mr. West.

In his application Mr. West raises three claims based on Tennessee Code Annotated section 40-30-117(a)(1), which provides for reopening a prior post-conviction petition where an appellate court establishes a new, retrospectively applied constitutional right. Upon consideration, this Court finds that none of these issues warrants granting the application. The claim that this Court's recent decision in Frazier v. State, 303 S.W.3d 674 (Tenn. 2010), created a new state constitutional right is without merit because Frazier addressed the statutory right to conflict-free counsel in a post-conviction proceeding. Likewise, the recent cases of Sears v. Upton, \_\_\_ U.S. \_\_\_, 130 S.Ct. 3259 (2010), and Porter v. McCollum, \_\_\_ U.S. \_\_\_, 130 S.Ct. 447 (2009), did not create new constitutional rights but clarified which applications of Strickland v. Washington, 466 U.S. 668 (1984), are unreasonable. Finally, while this Court held in Van Tran v. State, 66 S.W.3d 790 (Tenn. 2001), that a motion to reopen may be used to announce a new constitutional rule of great importance in unique circumstances, Mr. West's assertion that persons who suffer from severe mental illness should not be subject to the Eighth Amendment to the United States Constitution and Article

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I, sections 8 and 10 of the Tennessee Constitution is not the equivalent of the issue presented in Van Tran. See Irick v. State, 320 S.W.3d 284, 297-298 (Tenn. 2010). Therefore, upon due consideration of the application for permission to appeal and the record before us, the application is denied.

Denial of the application renders the Motion for Stay of Execution moot. Furthermore, a request for a stay to litigate claims in federal court is more appropriately addressed to that court. Coe v. State, 17 S.W.3d 251 (Tenn. 2000). Accordingly, the Motion for Stay of Execution filed by Mr. West is denied.

PER CURIAM