

**IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE**

FILED
FEB 20 2025
Clerk of the Appellate Courts REc'd By <u>MBL</u>

STATE OF TENNESSEE,)	
)	
Movant,)	
)	
v.)	Case No. M2025-00225-SC-DPE-DD
)	
KEVIN BURNS,)	CAPITAL CASE
)	
Respondent.)	

**UNOPPOSED MOTION FOR EXTENSION OF TIME TO FILE
RESPONSE TO MOTION TO SET EXECUTION DATE**

Kevin Burns moves this Court for a ninety-day extension of time to file his response in opposition to the Tennessee Attorney General's February 14, 2025 motion to set an execution date. He asks to be given until Tuesday, May 27, 2025, to file his response.

The Attorney General filed motions to set execution dates for five clients of the Office of the Federal Public Defender for the Middle District of Tennessee. Tennessee Supreme Court Rule 12.4(A) provides ten days to file a response to the request for execution date, which makes Mr. Burns's response due Monday, February 24, 2025.

Rule 12.4(A) requires the respondent to set forth in his response "any and all legal and/or factual grounds why the execution date should be delayed, why no execution date should be set, or why no execution should occur, including a claim that the prisoner is not competent to be

executed . . . ; or a request for a certificate of commutation pursuant to Tenn. Code Ann. § 40-27-106.”

Undersigned counsel is counsel of record for all five of the defendants for whom the state is seeking an execution date. Counsel requires additional time in which to prepare the response in opposition. Because the authority to request such dates rests solely with the Attorney General, counsel is unable to anticipatorily prepare for the pleadings required in response to this motion; the timing of the issues is, rather, thrust upon counsel.

In each of these matters, counsel anticipates filing a lengthy response in opposition with supporting documentation, which will attempt to address “any and all legal and/or factual grounds.” In each case, counsel will have to evaluate—among other issues—whether the client’s competency to be executed should be raised. As the Court knows, competency is dynamic, and in cases of individuals with severe mental illness, competency often deteriorates in response to stress. Issues such as competency to be executed are not ripe until an execution date is requested and cannot be evaluated prior to the notice provided by the Attorney General. *See Stewart v. Martinez-Villareal*, 523 U.S. 637 (1998); *Van Tran v. State*, 6 S.W.3d 257 (Tenn. 1999).

Counsel wishes to prepare helpful and concise briefing for the court, clearly illuminating the issues that require adjudication; doing such work requires careful evaluation, research and drafting. Given counsel’s professional commitments in other capital cases and the substantial effort required to provide a thoughtful, thorough, and helpful response in

opposition, the response in one case simply cannot be drafted within ten days, let alone responses in five cases.

This Court has granted similar requests in past cases. *See Ex. A* (90-day extension orders granted to Byron Black, Tony Carruthers, Henry Hodges, Donald Middlebrooks, Farris Morris, Pervis Payne, and Oscar Smith). The Attorney General does not oppose this motion.

WHEREFORE, given the gravity and complexity of the issue at hand, this Court should grant Mr. Burns a ninety-day extension of time in which to file his response in opposition to the request to set execution date.

Respectfully submitted this 20th day of February, 2025.



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CERTIFICATE OF SERVICE

I, Kelley J. Henry, certify that a true and correct copy of the foregoing Motion for Extension of Time to File Response in Opposition to Request to Set Execution Date was served via email to Nicholas W. Spangler, Associate Solicitor General.



Kelley J. Henry

DESIGNATION OF COUNSEL OF RECORD

Kelley J. Henry is counsel of record for this matter. Counsel prefers to be notified via email: kelly_henry@fd.org.



Counsel of Record

EXHIBIT A

90-day extension orders granted to Byron Black, Tony Carruthers,
Henry Hodges, Donald Middlebrooks, Farris Morris, Pervis Payne, and
Oscar Smith

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED
10/14/2019
Clerk of the
Appellate Courts

STATE OF TENNESSEE v. BYRON LEWIS BLACK

**Criminal Court for Davidson County
No. 88-S-1479**

No. M2000-00641-SC-DPE-CD

ORDER

On September 20, 2019, the State filed a motion to set an execution date for Byron Lewis Black. Pursuant to Tenn. Sup. Ct. R. 12.4(A), any response in opposition to the motion to set must be filed within ten (10) days. Mr. Black filed a motion seeking to extend the response period to ninety (90) days. The State does not oppose a reasonable extension.

Upon due consideration, it is hereby ORDERED that Mr. Black's response to the motion to set an execution date shall be filed no later than December 30, 2019.

PER CURIAM

IN THE SUPREME COURT OF TENNESSEE
AT JACKSON

FILED
10/14/2019
Clerk of the
Appellate Courts

STATE OF TENNESSEE v. TONY V. CARRUTHERS

Criminal Court for Shelby County
Nos. 94-02797, 94-02798, 94-02799, 95-11128, 95-11129

No. W1997-00097-SC-DDT-DD

ORDER

On September 20, 2019, the State filed a motion to set an execution date for Tony V. Carruthers. Pursuant to Tenn. Sup. Ct. R. 12.4(A), any response in opposition to the motion to set must be filed within ten (10) days. Mr. Carruthers filed a motion seeking to extend the response period to ninety (90) days. The State does not oppose a reasonable extension.

Upon due consideration, it is hereby ORDERED that Mr. Carruthers' response to the motion to set an execution date shall be filed no later than December 30, 2019.

PER CURIAM

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED
10/14/2019
Clerk of the
Appellate Courts

STATE OF TENNESSEE v. HENRY EUGENE HODGES

**Criminal Court for Davidson County
No. 90-S-1418**

No. M1999-00516-SC-R11-PD

ORDER

On September 20, 2019, the State filed a motion to set an execution date for Henry Eugene Hodges. Pursuant to Tenn. Sup. Ct. R. 12.4(A), any response in opposition to the motion to set must be filed within ten (10) days. Mr. Hodges filed a motion seeking to extend the response period to ninety (90) days. The State does not oppose a reasonable extension.

Upon due consideration, it is hereby ORDERED that Mr. Hodges' response to the motion to set an execution date shall be filed no later than December 30, 2019.

PER CURIAM

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED

10/14/2019

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. DONALD RAY MIDDLEBROOKS

Criminal Court for Davidson County
No. 87-F-1682

No. M2001-01865-SC-R11-PD

ORDER

On September 20, 2019, the State filed a motion to set an execution date for Donald Ray Middlebrooks. Pursuant to Tenn. Sup. Ct. R. 12.4(A), any response in opposition to the motion to set must be filed within ten (10) days. Mr. Middlebrooks filed a motion seeking to extend the response period to ninety (90) days. The State does not oppose a reasonable extension.

Upon due consideration, it is hereby ORDERED that Mr. Middlebrooks' response to the motion to set an execution date shall be filed no later than December 30, 2019.

PER CURIAM

IN THE SUPREME COURT OF TENNESSEE
AT JACKSON

FILED

10/14/2019

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. FARRIS GENNER MORRIS

**Circuit Court for Madison County
No. 94-1481**

No. W1998-00679-SC-DDT-DD

ORDER

On September 20, 2019, the State filed a motion to set an execution date for Farris Genner Morris. Pursuant to Tenn. Sup. Ct. R. 12.4(A), any response in opposition to the motion to set must be filed within ten (10) days. Mr. Morris filed a motion seeking to extend the response period to ninety (90) days. The State does not oppose a reasonable extension.

Upon due consideration, it is hereby ORDERED that Mr. Morris' response to the motion to set an execution date shall be filed no later than December 30, 2019.

PER CURIAM

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE



STATE OF TENNESSEE v. PERVIS T. PAYNE

**Criminal Court for Shelby County
Nos. 87-04409 and 87-04410**

No. M1988-00096-SC-DPE-DD

ORDER

On September 20, 2019, the State filed a motion to set an execution date for Pervis T. Payne. Pursuant to Tenn. Sup. Ct. R. 12.4(A), any response in opposition to the motion to set must be filed within ten (10) days. Mr. Payne filed a motion seeking to extend the response period to ninety (90) days. The State does not oppose a reasonable extension.

Upon due consideration, it is hereby ORDERED that Mr. Payne's response to the motion to set an execution date shall be filed no later than December 30, 2019.

PER CURIAM

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED

10/14/2019

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. OSCAR FRANKLIN SMITH

Criminal Court for Davidson County
No. 89-F-1773

No. M2016-01869-SC-R11-PD

ORDER

On September 20, 2019, the State filed a motion to set an execution date for Oscar Franklin Smith. Pursuant to Tenn. Sup. Ct. R. 12.4(A), any response in opposition to the motion to set must be filed within ten (10) days. Mr. Smith filed a motion seeking to extend the response period to ninety (90) days. The State does not oppose a reasonable extension.

Upon due consideration, it is hereby ORDERED that Mr. Smith's response to the motion to set an execution date shall be filed no later than December 30, 2019.

PER CURIAM