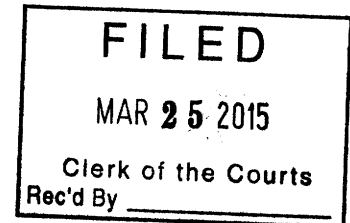


IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

IN RE RULE 12, SECTION 4(E),
RULES OF THE TENNESSEE SUPREME COURT

No. ADM2015-00524

ORDER



Rule 12, Rules of the Tennessee Supreme Court, establishes procedures in capital cases. Section 4 of the Rule governs the setting of execution dates at the conclusion of the standard three-tier appeals process. After due consideration, the Court has decided to amend Section 4(A) and Section 4(E) of Rule 12 to clarify the standards for granting or denying a State motion to set execution date, and for granting a death row prisoner's motion for stay or delay of execution for pending state or federal court litigation of collateral issues.

Accordingly, the Court hereby amends Rule 12, Section 4(A) and (E) as set out in the Appendix to this order. The amendments shall take effect on July 1, 2015, and shall apply to any motion to set an execution date, or any motion the effect of which would be to stay or delay an execution date, filed on or after that date.

The Clerk shall provide a copy of this order to LexisNexis and to Thomson Reuters. In addition, this order shall be posted on the Tennessee Supreme Court's website.

IT IS SO ORDERED.

PER CURIAM

APPENDIX

[Tenn. Sup. Ct. R. 12, § 4(A) and (E) is amended as indicated below by underlining (new text) and ~~overstriking~~ (deleted text).]

Rule 12. First-Degree Murder Trial Reports and Appeals in Capital Cases.

4. Setting Execution Date at Conclusion of Standard Three-Tier Appeals Process.

(A) Motion/Response.

After a death-row prisoner has pursued at least one unsuccessful challenge to the prisoner's conviction and sentence through direct appeal, state post-conviction, and federal habeas corpus proceedings, the State Attorney General shall file a motion requesting that this Court set an execution date. The motion shall include a brief summary of the procedural history of the case demonstrating that the prisoner has completed the standard three-tier appeals process. The motion shall be considered premature if filed prior to the expiration of the time for filing a petition for writ of certiorari or a petition to rehear the denial of a petition for writ of certiorari in the United States Supreme Court.

Any response in opposition to the motion shall be filed within ten (10) days after the motion is filed and shall assert 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, *see Coe v. State*, 17 S.W.3d 191 (Tenn. 2000); *Van Tran v. State*, 6 S.W.3d 257 (Tenn. 1999); or a request for a certificate of commutation pursuant to Tenn. Code Ann. § 40-27-106, *see Workman v. State*, 22 S.W.3d 807 (Tenn. 2000). Unless otherwise ordered by the Court, no reply to the response is required. The Court will not delay setting an execution date pending resolution of collateral litigation in federal court. The Court will not delay setting an execution date pending resolution of collateral litigation in state court unless the prisoner can prove a likelihood of success on the merits in that litigation.

(B) Designation of Attorney of Record.

In the motion and the response, the State and the prisoner shall designate an attorney of record upon whom service shall be made. In addition to the name of the attorney of record, the motion and response shall include the mailing address, E-mail address, if available, telephone number, and facsimile number, if available, of the attorney of record. The motion and response shall indicate the means by which the attorney of record prefers to be notified of orders or opinions of the Court. The Appellate Court Clerk shall notify the attorney of

record and provide him or her a copy of any and all orders and opinions issued by this Court in the matter. The attorney of record shall be responsible for notifying co-counsel and providing copies of any and all orders and opinions to co-counsel.

(C) Place of Filing/Number of Copies/Service.

Regardless of the Grand Division in which the case originated, the motion, response, and all subsequent filings in the matter shall be filed with the Office of the Appellate Court Clerk in Nashville. If the motion, response or any other filing in the matter exceeds fifty pages in length, a syllabus summarizing the contents shall accompany the filing. In addition to an original copy of the motion, response or other filing, an electronic copy of the filing shall be submitted to the Clerk at the time of filing by e-mail, in Adobe.pdf format.

Filing shall not be timely unless the documents are RECEIVED by the Clerk within the time fixed for filing. Mailing the papers within the time fixed for filing by certified return receipt mail or registered return receipt mail shall NOT be considered timely filing. Copies of all filings shall be served upon the opposing attorney of record contemporaneously with their filing, either by hand delivery, facsimile, or E-mail.

(D) Computation of Time Periods.

In computing the time periods for filing, the day of the event, i.e., filing of the motion or filing of the response to the motion, is not to be included in the computation. Moreover, if the last day of the period for filing is a Saturday, a Sunday, a legal holiday, or a day when the Clerk's office for filing is closed, the period runs until the end of the next day which is not a Saturday, a Sunday, a legal holiday, or a day when the Clerk's office is closed. In all other circumstances, Saturdays, Sundays, legal holidays, and days when the Clerk's office is closed for filing are included in the computation of the time periods.

(E) Date of Execution/Stays and Reprieves.

¶Upon the grant of a State's motion to set an execution date, the Court shall set the date of execution no less than thirty (30) days from the date of the order granting the State's motion. Where the date set by the Court for execution has passed by reason of a stay or reprieve, this Court shall sua sponte set a new date of execution when the stay or reprieve is lifted or dissolved, and the State shall not be required to file a new motion to set an execution date. ¶In the latter event, any new date of execution shall be no less than seven (7) days from the date of the order setting the new execution date.

After a date of execution is set, the Court will not grant a stay or delay of an execution date pending resolution of collateral litigation in federal court. Likewise, the Court will not grant

a stay or delay of an execution date pending resolution of collateral litigation in state court unless the prisoner can prove a likelihood of success on the merits in that litigation.

The State Attorney General shall provide a copy of any judicial or executive order staying the execution or granting a reprieve to the Office of the Clerk of the Appellate Courts in Nashville. The Clerk shall expeditiously furnish a copy of the order to the Warden of the Riverbend Maximum Security Institution. In addition, the State Attorney General shall expeditiously provide a copy of any judicial or executive order lifting or dissolving the stay or reprieve to the Office of the Appellate Court Clerk in Nashville.

EXPLANATORY COMMENT:

Section 4(A) and Section 4(E) of Rule 12 were amended to clarify the standards for granting or denying a State motion to set execution date, and for granting a death row prisoner's motion for stay or delay of execution for pending state or federal court litigation of collateral issues.

[end of Appendix]