

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

ABU-ALI ABDUR'RAHMAN)	
(formerly James Lee Jones))	
)	
Respondent/Defendant)	
)	M1988-00026-SC-DPE-PD
v)	C.C.A. No. 01C01-9402-CR-00079
)	
STATE OF TENNESSEE)	Filed: September 20, 2000 - 10:31 a.m.
)	
Movant)	

OBJECTION TO MOTION TO RE-SET EXECUTION DATE

—

Movant asks this Court to set an execution date for Respondent. A stay of the execution was entered in this case by the federal court on May 28, 1996. See Abdur'Rahman v Bell, 927 F.Supp. 262 (M.D.Tenn. 1996). The federal district court set Abdur'Rahman's death sentence aside and left his conviction intact. See Abdur'Rahman v Bell, 999 F.Supp. 1073 (M.D.Tenn. 1996). In a split decision, filed on September 13, 2000, all three members of the panel filing separate opinions, including a dissent in the result by one panel member, the district court's decision as to the death sentence was reversed. See Abdur'Rahman v Bell, ___ F.3d ___, 2000 Fed. App. 0319P (6th Cir.) (copy attached to Movant's motion).

Because the federal action is not concluded and a mandate has not issued, Movant's

motion is premature. A mandate has not issued in the federal action and will not issue until seven (7) days after the due date for the filing of a petition for rehearing, F.R.A.P. 41(b), which is fourteen (14) days after the entry of judgment, F.R.A.P. 40(a)(1). The timely filing of a petition for rehearing, should one be filed, will automatically extend the stay of execution “for any matter involved in the habeas corpus proceeding.”, and any state court action during this pendency would be void. See 28 USC §2251. This case is, therefore, not ripe for the setting of an execution date. See Workman v State, 22 S.W.3d 807, 809 (Tenn. 2000).

Wherefore, Movant’s motion is premature. The setting of an execution date at this time would be void because it would violate the district court’s order staying the execution, which remains in effect, at least until the Sixth Circuit Court of Appeals issues a mandate. Movant’s request to set an execution date, therefore, should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was provided to Assistant Attorney General Glenn R. Pruden, 425 5th Ave. N., Nashville, Tennessee 37243 by U. S. mail on this the 15th day of September, 2000.

William P. Redick, Jr.