

IN THE SUPREME COURT OF TENNESSEE  
AT KNOXVILLE

**FILED**  
02/22/2022  
Clerk of the  
Appellate Courts

**STATE OF TENNESSEE vs. GARY WAYNE SUTTON**

**Circuit Court for Blount County  
No. C6669, C6670**

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**No. E1997-00196-SC-DDT-DD**

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**ORDER**

On September 20, 2019, the State of Tennessee filed a motion to set an execution date for Gary Wayne Sutton, indicating Mr. Sutton has completed the standard three-tier appeals process and that an execution date should be set in accordance with Tennessee Supreme Court Rule 12(4)(A). On December 30, 2019, Mr. Sutton filed a response opposing the State’s motion and asking the Court to issue a certificate of commutation under Tennessee Code Annotated section 40-27-106. In February 2020, Mr. Sutton filed a supplemental response describing the State’s motion as premature. The Court’s consideration of the motion and response was delayed due to the COVID-19 pandemic.

Initially, Mr. Sutton submits that setting an execution date is premature because James Dellinger, his codefendant at trial, is pursuing his own federal habeas corpus petition. However, Mr. Sutton does not indicate that he is seeking further federal habeas corpus relief following the dismissal of his habeas corpus petition. Accordingly, Mr. Dellinger’s habeas corpus proceeding is not a basis to delay setting Mr. Sutton’s execution date.

As grounds for issuance of a certificate of commutation, Mr. Sutton primarily asserts: (1) the medical examiner was subsequently discredited; (2) the State never established a motive for the killing; and (3) the jury was unable to accurately assess his moral culpability. Upon thorough review of the motion, the responses, and the documentation submitted with the responses, the Court concludes that under the principles announced in *Workman v. State*, 22 S.W.3d 807 (Tenn. 2000), Mr. Sutton has presented no extenuating circumstances warranting issuance of a certificate of commutation. It is therefore ordered that the request for a certificate of commutation

is denied.

Upon due consideration, the State's motion to set an execution date for Gary Wayne Sutton is GRANTED. Accordingly, under the provisions of Rule 12(4)(E), it is hereby ORDERED, ADJUDGED and DECREED by this Court that the Warden of the Riverbend Maximum Security Institution, or his designee, shall execute the sentence of death as provided by law on the 6th day of October, 2022, unless otherwise ordered by this Court or other appropriate authority. No later than September 22, 2022, the Warden or his designee shall notify Mr. Sutton of the method that the Tennessee Department of Correction (TDOC) will use to carry out the execution and of any decision by the Commissioner of TDOC to rely upon the Capital Punishment Enforcement Act. *See* Tenn. Code Ann. § 40-23-114. Counsel for Gary Wayne Sutton shall provide a copy of any order staying execution of this order to the Office of the Clerk of the Appellate Court in Nashville. The Clerk shall expeditiously furnish a copy of any order of stay to the Warden of the Riverbend Maximum Security Institution.

PER CURIAM