

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED
JUL 26 2010
Clerk of the Courts

IN RE:) HAMILTON COUNTY
EDWARD JEROME HARBISON) No. M1986-00093-SC-OT-DD
)

MOTION TO RE-SET EXECUTION DATE

The State of Tennessee requests the setting of a new execution date for Edward Jerome Harbison for the 1983 first-degree murder of Edith Russell. *State v. Harbison*, 704 S.W.2d 314 (Tenn.), *cert. denied*, 476 U.S. 1153 (1986). This Court previously scheduled Harbison's execution for October 2006, following his completion of the standard three-tier appeals process pursuant to Tenn. Sup. Ct. R. 12.4(A), *State v. Harbison*, No. M1986-00093-SC-OT-DD (Tenn. July 17, 2006), and there have been multiple settings since that time.¹ Most recently, on September 19, 2007, the United States District Court for the Middle District of Tennessee enjoined the Tennessee Department of Correction from executing Harbison under Tennessee's Execution Procedures for Lethal Injection, after finding those procedures violated his rights under the Eighth and Fourteenth Amendments to the United States Constitution.

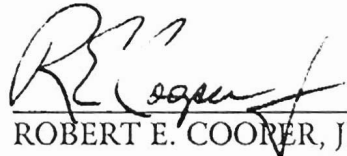
¹ *State v. Harbison*, No. M1986-00093-SC-OT-DD (Tenn. Aug. 15, 2006) (February 22, 2007, setting); *State v. Harbison*, No. M1986-00093-SC-OT-DD (Tenn. May 22, 2007) (September 26, 2007, setting); *State v. Harbison*, No. M1986-00093-SC-OT-DD (Tenn. Sept. 25, 2007) (January 9, 2008, setting).

Edward Jerome Harbison v. George Little, et al., No. 3:06-cv-01206 (M.D. Tenn. Sept. 19, 2007) (Trauger, J.) (Attachment 1). On November 28, 2007, the United States Court of Appeals for the Sixth Circuit stayed Harbison's execution date, then scheduled for January 9, 2008. *Edward Harbison v. George Little et al.*, No. 07-6225 (6th Cir. Nov. 28, 2007) (Attachment 2).

On July 2, 2009, the Sixth Circuit vacated the judgment of the district court and remanded the case with instructions to vacate the 2007 injunction barring the State from executing Harbison. *Harbison v. Little*, 571 F.3d 531 (6th Cir. 2009), *cert. denied*, 130 S.Ct. 1689 (2010). On July 12, 2010, the district court vacated its injunction in accordance with the Sixth Circuit's mandate. *Edward Jerome Harbison v. George Little, et al.*, No. 3:06-cv-01206 (M.D. Tenn. July 12, 2010) (Trauger, J.) (Attachment 3).

There now being no legal impediment to Harbison's lawful execution, the State of Tennessee requests that the Court set a new execution date. *See* Tenn. Sup. Ct. R. 12.4(E) ("Where the date set by the Court for execution has passed by reason of a stay or reprieve . . . [a]ny new date of execution shall be no less than seven (7) days from the date of the order setting the new execution date.").

Respectfully submitted,



ROBERT E. COOPER, JR.
Attorney General & Reporter



GORDON W. SMITH
Associate Solicitor General



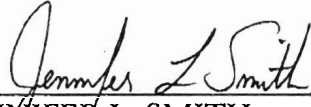
JENNIFER L. SMITH
Associate Deputy Attorney General
Attorney of Record
425 Fifth Avenue North
P.O. Box 20207
Nashville, Tennessee 37202-0207
Jennifer.Smith@ag.tn.gov
Phone: (615) 741-3487
Fax: (615) 532-7791

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Motion has been forwarded via Facsimile and First-Class U.S. mail, postage prepaid on this the 26th day of July, 2010 to:

Dana C. Hansen Chavis
Federal Defender Services of Eastern Tennessee, Inc.
800 South Gay Street, Suite 2400
Knoxville, TN 37929
Phone: (865) 637-7979
Fax: (865) 637-7999

The undersigned attorney of record prefers to be notified of any orders or opinions of the Court by Facsimile at (615) 532-7791.



JENNIFER L. SMITH
Associate Deputy Attorney General

ATTACHMENT 1

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

EDWARD JEROME HARBISON,)	
)	
Plaintiff,)	
)	
v.)	Civil No. 3:06-1206
)	Judge Trauger
GEORGE LITTLE, in his official capacity as)	
Tennessee's Commissioner of Correction, <i>et al.</i> ,)	
)	
Defendants.)	

ORDER

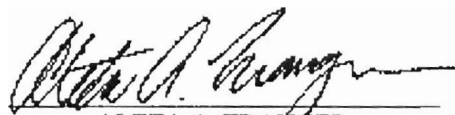
For the reasons expressed in the accompanying Memorandum, it is hereby **ORDERED** that the defendants are **ENJOINED** from executing the plaintiff, Edward Jerome Harbison, under the current Execution Procedures for Lethal Injection (Defendant's Ex. 8), as this court has found those procedures violative of the Eighth Amendment to the Constitution of the United States, made enforceable against the states under the Fourteenth Amendment to the Constitution of the United States. **JUDGMENT** is hereby entered in favor of the plaintiff, Edward Jerome Harbison.

A stay of the execution of Mr. Harbison, presently scheduled for September 26, 2007, does not hereby issue. The Amended Complaint (Docket No. 63) does not request a stay. Moreover, a stay is not authorized, given the terms of Tennessee Code Annotated § 40-23-114(d), which provides, in part:

In any case in which an execution method is declared unconstitutional, the death sentence shall remain in force until the sentence can be lawfully executed by any valid method of execution.

It is so **ORDERED**.

Enter this 19th day of September 2007.



ALETA A. TRAUGER
U.S. District Judge

ATTACHMENT 2

Case No. 07-6225

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

ORDER

EDWARD JEROME HARBISON,

Plaintiff - Appellee

v.

GEORGE LITTLE, in his official capacity as Tennessee's Commissioner of Correction; RICKY BELL, in his official capacity as Warden, Riverbend Maximum Security Institution; JOHN DOES, in their official capacity as employees of the Tennessee Department of Correction; ROLAND COLSON; GAYLE RAY, Deputy Commissioner,

Defendants - Appellants

Upon consideration of Appellee's motion to stay the execution date currently scheduled for January 9, 2008,

It is **ORDERED** that the motion be and it hereby is **GRANTED**.

ENTERED BY ORDER OF THE COURT

Leonard Green, Clerk



Issued: November 28, 2007

ATTACHMENT 3

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

EDWARD JEROME HARBISON,)
)
 Plaintiff,)

Case No. 3:06-cv-01206
Judge Trauger

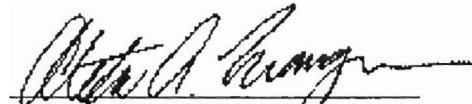
GEORGE LITTLE, in his official capacity)
 as Tennessee's Commissioner of Correction,)
 RICKY BELL, in his official capacity as)
 Warden, Riverbend Maximum Security)
 Institution, JOHN DOE PHYSICIANS 1-100,)
 JOHN DOE PHARMACISTS 1-100,)
 JOHN DOE MEDICAL PERSONNEL 1-100,)
 JOHN DOE EXECUTIONERS 1-100, and)
 JOHN DOES 1-100,)
 Defendants.)

ORDER

For the reasons expressed in the accompanying Memorandum, the Second Motion to Amend Complaint filed by the plaintiff (Docket No. 169) is **DENIED**. The Motion to Vacate Injunction and Enter Judgment filed by the defendants (Docket No. 172) is **GRANTED**. The plaintiff's request for oral argument on these motions is denied. The injunction previously entered by the court (Docket No. 148) is hereby **VACATED**, and all of the plaintiff's claims are **DISMISSED** with prejudice. Entry of this Order shall constitute the judgment in this case.

It is so Ordered.

Entered this 12th day of July 2010.



ALETA A. TRAUGER
United States District Judge