

ORIGINAL

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

DEC 14 AM 9:10

IN RE GAILE OWENS

) Shelby County

) No. 85-01174

)

APPELLATE COURT CLERK
NASHVILLE

M 1988-00125-SC-DPC-DD

**MOTION FOR EXTENSION OF TIME TO RESPOND
TO MOTION TO SET EXECUTION DATE**

Counsel for Gaile Owens respectfully moves this Court for an extension of time, until February 5, 2010, to file a response to the State's Motion to Set An Execution Date for Ms. Owens.

In support of this motion, counsel for Ms. Owens states:

1. This case is unlike any other that has come before this Court. This is true not only because it has been over 180 years since Tennessee executed a woman,¹ but also because Ms. Owens is the only Tennessee death row inmate who was offered a plea agreement to serve life in prison prior to trial (approved by the victim's father) and who accepted that plea offer because of her extraordinary remorse, only to be forced to trial based on circumstances out of her control.

2. A plethora of evidence demonstrates that Ms. Owens should not be put to death. That evidence was never presented to this or any other Tennessee court, nor the federal courts, because of the shockingly inept representation Ms. Owens received at trial and in state post-conviction and because of the limitations of the AEDPA. As a result, no court has fairly considered evidence that Ms. Owens was a battered woman – the victim of emotional, physical, and sexual abuse – nor has any court considered the disproportionality of Ms. Owens's capital sentence compared to the sentences received by others similarly situated, like Mary Winkler or William Groseclose.

¹The last execution of a woman in Tennessee was that of Eve Martin (race unknown) in 1820 by hanging. Only three other women have been executed (all by hanging) in Tennessee: Molly Holcomb, a Black woman (1807), and two unnamed black women (1809 and 1819). See <http://www.deathpenaltyinfo.org/ESPYstate.pdf> (Last checked 12/14/09).

3. Before this Court, the Highest Court in Tennessee, sits in final judgment in this historically significant case, it is imperative that these facts and circumstances are fully presented.

4. As is his duty, on December 8, 2009, the State Attorney General filed with this Court a Motion to Set Execution Date. Under Tenn.S.Ct. 12.4(A), a response to such motion is to be filed within 10 days of the filing of the motion and is to include all legal and/or factual grounds why the date should be delayed, why no date should be set, or why no execution should occur. Id. The response may also include a request for a certificate of commutation. Id. A response is currently due December 18, 2010.

5. Counsel intends to file a response on behalf of Ms. Owens, as there are many reasons why Ms. Owens should not be executed and why this Court should not set an execution date, but should instead issue a certificate of commutation, including: (1) evidence establishing that Ms. Owens was the victim of abuse; (2) evidence demonstrating that Ms. Owens's trial lawyers utterly failed in their representation of Ms. Owens; (3) evidence showing that Ms. Owens's post-conviction attorneys at the State Post-Conviction Defender's Office squandered the hard-fought opportunity to present expert testimony on behalf of Ms. Owens by hiring an incompetent witness to testify in post-conviction; (4) evidence establishing that the same prosecutor who the Supreme Court just criticized for withholding evidence from Vietnam Veteran Gary Cone, also misled the trial court and trial lawyers about the existence of salacious love letters between the victim and his lover, thereby preventing Ms. Owens from proving her husband's infidelity at trial; and (5) evidence that the imposition of the death penalty in this case is truly disproportionate.

8. Counsel cannot provide this Court with their Response by December 18, 2009 because of pre-existing responsibilities that cannot be changed. Both counsel for Ms. Owens have

an active docket of death penalty cases. Both counsel are obligated to attend a work-related meeting in Atlanta, Georgia starting mid-day on December 14 and through the day on December 15. Moreover, Counsel Swift is pregnant with her first child and has previously scheduled doctor's appointments on December 16. Counsel Henry has numerous obligations throughout the week of December 16-18. Both counsel have familial obligations during the week of the Christmas Holiday and Counsel Henry has previously scheduled surgery on December 28, 2009. Counsel Henry has been told by her surgeons that she will not be able to return to the office until February 1, 2009.

9. Ms. Owens's case has bounced around from lawyer to lawyer throughout all three stages of court proceedings. Ms. Owens had four different lawyers in the year prior to her trial, and had three different sets of lawyers during state post-conviction proceedings. Ms. Swift and Ms. Henry have been involved in the representation of Ms. Owens in federal court since 2002 and are the first pair of lawyers who have consistently worked together as a team for Ms. Owens. Ms. Owens is entitled to have both of her attorneys available to draft this final and important Response.


10. Counsel for Ms. Owens has contacted counsel for the state, Gordon Smith, who stated that he could only agree to an extension until January 4, 2010.

11. Given the circumstances, counsel for Ms. Owens submit that the interests of justice will be served by granting the full extension requested, until February 5, 2010.

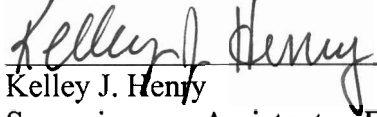
12. Ms. Owens, a battered woman who accepted responsibility and a life sentence for her role in her husband's murder, is certainly not the first woman that Tennessee should execute after 180 years – especially when other similarly situated women, like Mary Winkler, have served less than one year in jail for similar crimes.

13. Counsel respectfully request the opportunity to present this case and their Response properly to this Court.

Respectfully Submitted,



Gretchen L. Swift
Assistant Federal Public Defender

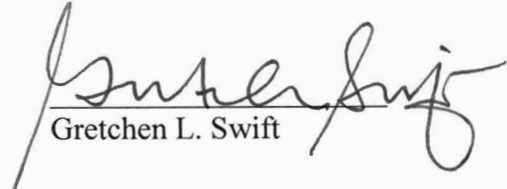


Kelley J. Henry
Supervisory Assistant Federal Public
Defender for the Capital Habeas Unit


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Nashville, Tennessee 37203
615-736-5047

VERIFICATION

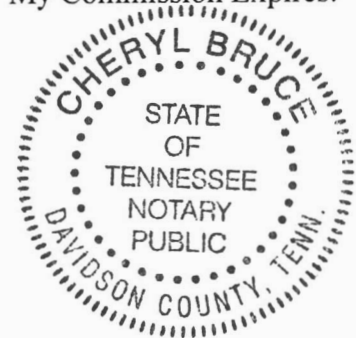
I verify that the statements contained in this motion are true and correct to the best of my knowledge.


Gretchen L. Swift

Subscribed and sworn before me this 14th day of December, 2009.


Notary Public, State Of Tennessee

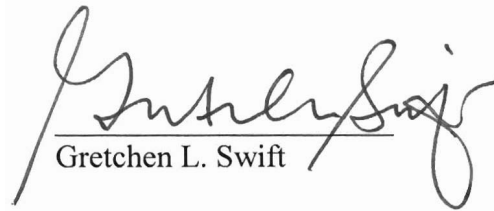
My Commission Expires:



My Commission Expires NOV. 7, 2011

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing motion was served by email upon Gordon Smith, Assistant Solicitor General, 425 Fifth Avenue North, Nashville, Tennessee 37243 this the 14th day of December, 2009.



Gretchen L. Swift