

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

LINDA MARTINIANO)
Next Friend for Paul Dennis Reid)
)
v.) NO. 3:06-CV-0632
) JUDGE CAMPBELL
RICKY BELL, Warden) DEATH PENALTY

ORDER AND STAY OF EXECUTION

Pending before the Court is a Consolidated Motion for Stay of Execution, For Appointment of Counsel, and Initial Petition for A Writ of Habeas Corpus By Next Friend on Behalf of Paul Reid. The Court held a hearing on the Motion on June 27, 2006.

Paul Dennis Reid is scheduled to be executed on June 28, 2006 for the murders of Angela Holmes and Michelle Mace in 1997 in Clarksville, Tennessee. State v. Reid, 164 S.W.3d 286 (Tenn. 2005).

Through the Motion, Mr. Reid's sister, Linda Martiniano, seeks appointment as next friend of Mr. Reid in order to file a habeas corpus petition in this Court on his behalf. The direct appeals in state court of the Clarksville, Tennessee convictions and sentence have been completed. Mr. Reid has not filed a state post conviction petition or a federal habeas corpus petition and has declined to do so. If a petition were filed, Mr. Reid would be entitled to a stay of execution. See McFarland v. Scott, 512 U.S. 849, 114 S.Ct. 2568, 129 L.Ed.2d 666 (1994).

The Supreme Court has held that a "next friend" may sue in place of a death-sentenced prisoner only when that person clearly shows that the prisoner is not competent." West v. Bell, 242 F.3d 338, 341 (6th Cir. 2001)(citing Whitmore v. Arkansas, 495 U.S. 149, 164-66, 110 S.Ct. 1717, 109 L.Ed.2d 135 (1990) and Rees v. Peyton, 384 U.S. 312, 314, 86 S.Ct. 1505, 16 L.Ed.2d 583 (1966)). The "burden is still on the putative 'next friend' to demonstrate, not simply assert,

the incompetence of the prisoner.” West, 242 F.3d at 341. The “Next Friend” must demonstrate, in the words of Rees, that the prisoner does not have the “capacity to appreciate his position and make a rational choice with respect to continuing or abandoning further litigation or ... suffer[s] from a mental disease, disorder, or defect which may substantially affect his capacity in the premises.” Rees, 384 U.S. at 314; West, 242 F.3d 341.

The procedure to follow in making these determinations was set forth by the Sixth Circuit Court of Appeals in a case decided three years ago also involving Mr. Reid, Kirkpatrick v. Bell, 64 Fed. Appx. 495, 2003 WL 21054667 (6th Cir. 2003). In Kirkpatrick, the Sixth Circuit explained that the criteria for the court to apply at the preliminary hearing on mental incompetence is to “determine whether there is any evidence that would raise a reasonable doubt about Reid’s competence and entitle him to a full evidentiary hearing on the issue.” 2003 WL 21054667 at **1 (citing Harper v. Parker, 177 F.3d 567, 571 (6th Cir. 1999)). As the State in that proceeding had not had an opportunity to evaluate Mr. Reid and all the expert evidence pointed toward the incompetence of Mr. Reid, the Sixth Circuit granted a stay of the execution “until such time as the district court has had an opportunity to conduct a full evidentiary hearing, allowing the State to evaluate Reid and to present evidence concerning his competency.” Id.

At the hearing on the pending Motion, the Movant presented testimony of an expert, Dr. George W. Woods, Jr., and submitted other proof indicating that Mr. Reid does not have the capacity to appreciate his position and make a rational choice with respect to continuing or abandoning further litigation and that he suffers from a mental disease, disorder or defect which may substantially affect his capacity in the premises. The State called no witnesses and offered no countervailing proof, expert or otherwise.

Based on the evidence in the record, the Court found that there was sufficient evidence to raise a reasonable doubt about Mr. Reid's competence, and therefore, under the standard set forth by the Sixth Circuit in Kirkpatrick, the parties are entitled to a full evidentiary hearing on the issue.

Although the Court indicated that it was fully prepared to proceed with the full evidentiary hearing today, the State indicated that it would require an opportunity to evaluate Mr. Reid prior to the hearing, and that such an evaluation could not be completed prior to the scheduled execution. The State argued, however, that the Movant was not entitled to a stay given the late filing of the motion.

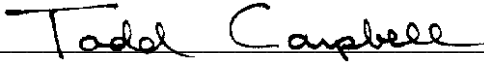
Given that the posture of this matter is now the same as that in Kirkpatrick, the Court must issue a stay of execution until such time as the parties have had an opportunity to hold a full evidentiary hearing on the issue of Mr. Reid's competency. The date of the hearing will be set by separate order.

The Motion for Stay of Execution is GRANTED and the execution is stayed pending a full evidentiary hearing on Reid's competency and pending further order of the Court.

The Motion for Appointment of Counsel is GRANTED and counsel will be appointed by separate order.

The Clerk is directed to transmit a copy of this Order to the Court of Appeals for the Sixth Circuit immediately.

IT IS SO ORDERED.


TODD J. CAMPBELL
UNITED STATES DISTRICT JUDGE