

**IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE**

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| PAUL DENNIS REID, JR., |) | |
| by and through Linda Martiniano, |) | CCA NO. M2006-01294-CCA-R3-PC |
| |) | |
| |) | Montgomery County Circuit Court |
| |) | Trial Court No. 38887 |
| Petitioner, |) | |
| |) | |
| |) | Death Penalty Post-Conviction |
| |) | EXECUTION DATE: June 28, 2006 |
| STATE OF TENNESSEE, |) | |
| |) | |
| Respondent. |) | |

**MOTION FOR STAY OF EXECUTION PENDING TRAP 3 APPEAL OF RIGHT
OF DISMISSAL OF POST-CONVICTION PETITION,
AND TRUNCATED APPELLATE BRIEF**

EXPEDITED HEARING REQUESTED

Pursuant to the Rules of the Tennessee Supreme Court, Rule 28, Section 10(C), Linda Martiniano, proffered next friend for Paul Dennis Reid, Jr., respectfully moves this Court to stay Mr. Reid's execution, schedule briefing and argument on this T.R.A.P. 3 appeal of right, and reverse the lower court's ruling dismissing the filed post-conviction petition. An expedited hearing on this matter is requested.

This case involves unresolved important issues of first impression, regarding the appropriate standards and procedures for permitting a next friend to initiate a post-conviction proceeding for a death sentenced inmate whom the State and Circuit Court agree suffers from a serious mental disease or defect. A notice of appeal and designation of record were filed, on June 20, 2006, but the record in the court below is currently not prepared in accordance with the T.R.A.P. 24. On behalf of Ms. Martiniano, counsel have

made diligent efforts to ensure that the issues herein are presented and resolved in a timely fashion. A stay of execution is required to ensure sufficient time for adequate and reflective briefing and review of the unprecedented legal and factual issues herein.

A death-sentenced person who is incompetent to proceed in a post-conviction proceeding can be represented in such proceeding by a “next friend.”¹ The State concedes that Mr. Reid has a mental illness that results in persistent delusions about government controlling his life and the legal process.² Without conducting a hearing, but looking only to the proffered evidence, the court below acknowledged that Dr. Woods, a neuropsychiatrist who has diagnosed Mr. Reid with a severe neurological disorder, is highly credentialed, and did not dispute either Dr. Woods’ diagnosis or the details of Mr. Reid’s current delusions. Dr. Woods tendered an affidavit regarding Mr. Reid’s current mental state, which is a product of left temporal lobe dysfunction, a neurological disorder which has produced in Mr. Reid a chronic, schizophrenia-like psychosis which has severely impaired his ability to weigh, deliberate, inform and cooperate. Dr. Woods opined that Mr. Reid is presently incompetent, either under *Rees v. Peyton*, 384 U.S. 312, 314, 86 S.Ct. 1505, 1506, 16 L.Ed.2d 583 (1966) or *State v. Nix*, 40 S.W.3d 459 (Tenn. 2001).

Nevertheless, the lower court dismissed the next friend’s post-conviction petition, finding an insufficient prima facie case of present incompetency was demonstrated under the competency standard set forth in *State v. Nix*, 40 S.W.3d 459, 464 (Tenn. 2001).

¹ The State concedes that Mrs. Martiniano meets the relationship test to serve as next friend. The Montgomery County Circuit Court found that Mrs. Martiniano qualifies to act as next friend for her brother Paul Reid.

² The State’s Answer to Petition for Post-Conviction Relief (Attachment 6) asserts that “Reid has persistent delusions about government controlling his life and the legal process.” Attachment 6 at p. 5, ¶ 5.

Counsel have contacted Jennifer Smith, Associate Deputy Attorney General, regarding this motion. The State opposes a stay. Further, the State asserts that the Tennessee Supreme Court is the only Court with jurisdiction to enter a stay.

I. INTRODUCTION

1. This matter comes before this Court upon a timely motion for review, pursuant to Rules of the Tennessee Supreme Court, Rule 28, Section 10(C), of the June 21, 2006 Order (Attachment 1) of the Montgomery County Circuit Court denying a stay of execution pending an appeal of right upon dismissal of the post-conviction petition (Attachment 2) filed by Linda Martiniano, next friend, on behalf of her brother, the petitioner. The lower court dismissed the post-conviction petition by Order entered June 13, 2006 (Attachment 3).³ The Montgomery County Circuit Court denied the next friend's Motion For Stay Of Execution Pending TRAP 3 Appeal Of Right Of Dismissal Of Post-Conviction Petition (Attachment 4), filed June 16, 2006, by Order entered June 21, 2006, because the Circuit Court found that it is without authority to grant a stay. The court below abused its discretion in failing to grant the stay, which should have been entered as a matter of course since the law clearly authorizes an appeal of right in this matter.

2. This Court has jurisdiction to review the denial of the motion for a stay of execution. Rules of the Tennessee Supreme Court, Rule 28, Section 10(C). This Court should grant review and issue an Order staying the execution, currently set for June 28, 2006, pending a T.R.A.P. 3 appeal of right of the Montgomery Circuit Court's June 13, 2006 Order dismissing this post-conviction petition.

³ The next friend's motion for a stay or execution and appointment of counsel (Attachment 5) filed with the post-conviction petition were also denied by the Court in the June 13, 2006 Order.

3. A stay of execution is necessary in order to effectuate Mr. Reid's rights to due process, access to the courts, equal protection, and protection from cruel and unusual treatment under the state and federal constitutions. Amendments 1, 5, 6, 8, and 14, U.S. Constitution; Article I, § 8, 9, 16, 17 ("[A]ll courts shall be open and every man, for an injury done him shall have remedy by due course of law."), Tennessee Constitution. *See, e.g., John L. v. Adams*, 969 F.2d 228 (6th Cir. 1992); *Evitts v. Lucey*, 469 U.S. 387, 396, 105 S.Ct. 830, 836, 83 L.Ed.2d 821 (1985); *Halbert v. Michigan*, 545 U.S. ___, 125 S.Ct. 2582, 2586, 162 L.Ed.2d 552 (2005).

4. An appeal of right upon the dismissal of this post-conviction petition is clearly authorized under Tennessee law. *See* T.R.A.P. 3(b); Tenn. Sup. Ct. R. 28, Sec. 10(A) ("An appeal from the dismissal or denial of a post-conviction petition shall be in accordance with the Tennessee Rules of Appellate Procedure."); Tenn. Code Ann. §40-30-116 ("The Order granting or denying relief under the provisions of this part shall be deemed a final judgment, and an appeal may be taken to the court of criminal appeals in the manner prescribed by the Tennessee Rules of Appellate Procedure."); *Recor v. State*, 489 S.W.2d 64 (Tenn. Crim. App. 1972). Ms. Martiniano as next friend has exercised this right of appeal by filing a notice of appeal and designation of record⁴; however, Mr. Reid is currently scheduled for execution on June 28, 2006.

5. Counsel for the next friend have diligently pursued this matter in the lower court, beginning on May 23, 2006. Through no fault of counsel or Appellant, only days are left before Mr. Reid's execution. There is insufficient time for adequate and reflective

⁴ The record in the court below is currently not prepared in accordance with T.R.A.P. 24. Until the record can be completed, counsel move the Court to consider, in support of this motion, and pursuant to T.R.A.P. 20, the attachments which are file stamped copies of documents in the record or transcripts prepared by the court reporter but not yet approved by counsel or the court below.

briefing and review of the serious issues of first impression raised in this matter, which involve the appropriate standards and procedures for permitting a next friend to initiate post-conviction proceedings for a death sentenced inmate who the State and court below agree suffers from a serious mental disease or defect. The effect of Mr. Reid's mental/neurological disorder upon his present competency has not been considered at any evidentiary hearing despite abundant information presented of present incompetence, including the sworn affidavit of neuropsychiatrist Dr. George Woods that Mr. Reid is incompetent.⁵

A more detailed procedural history is set forth, *infra*, in Section IV.

II. ISSUES OF FIRST IMPRESSION IN THE APPEAL OF RIGHT

A. Did the court below apply an erroneous competency standard in determining whether a prima facie case of incompetence was demonstrated for purposes of initiating a capital post-conviction proceeding by next friend?

1. The Montgomery County Circuit Court applied the competency standard found in *State v. Nix*, 40 S.W.3d 459, 464 (Tenn. 2001) (“inability to manage his personal affairs or understand his legal rights and liabilities”) in determining that insufficient evidence was provided to demonstrate a prima facie showing of present incompetence.⁶ The competency standard found in *Nix* is not the correct competency standard in this context. The *Nix* competency standard applies only to situations where a post-conviction petition has been filed past the statute of limitations. The trial court's application of *Nix*

⁵ The last competency hearing in state court was in April 2000. Experts disagreed at that time regarding Mr. Reid's competency. A preliminary competency hearing was conducted in federal district court in April 2003. The United States Court of Appeals for the Sixth Circuit found that at that hearing all of the expert evidence pointed toward Mr. Reid's present mental incompetence. *Kirkpatrick v. Bell*, 64 Fed.Appx. 495, 2003 WL 21054667 (6th Cir. 2003). Mr. Reid has deteriorated since then.

⁶ Appellant contends that Mr. Reid is incompetent under both *Rees* and *Nix*. At the very least, the Appellant made a prima facie showing of incompetency below sufficient to require an evidentiary hearing on the question. See subsection B, *infra*.

violated Mr. Reid's rights to due process and equal protection under the state and federal constitutions.⁷

2. The competency standard applicable to initiation of a timely next friend post-conviction proceeding is found in *Rees v. Peyton*, 384 U.S. 312, 314, 86 S.Ct. 1505, 1506, 16 L.Ed.2d 583 (1966) and its progeny:

whether [the condemned person] has capacity to appreciate his position and make a rational choice with respect to continuing or abandoning further litigation or on the other hand whether he is suffering from a mental disease, disorder or defect which may substantially affect his capacity in the premises.

See also Whitmore v. Arkansas, 495 U.S. 149, 165-166, 110 S.Ct. 1717, 109 L.Ed.2d 135 (1990) (“meaningful evidence that he was suffering from a mental disease, disorder, or defect that substantially affected his capacity to make an intelligent decision”). This is the standard also found in Rules of the Tennessee Supreme Court, Rule 28, Section 11(B)(1) Competency:

The standard for determining competency of a petitioner to withdraw a post-conviction petition and waive further post-conviction relief under this section is: whether the petitioner possesses the present capacity to appreciate the petitioner's position and make a rational choice with respect to continuing or abandoning further litigation or on the other hand whether the petitioner is suffering from a mental disease, disorder, or defect which may substantially affect the petitioner's capacity.

3. In *Holton v. State*, ___ S.W.3d ___, 2003 WL 24314330 (Tenn. May 4, 2006), in the section titled “Standards in Tennessee,” the Supreme Court did not explicitly state the standard for determining incompetence in a next friend post-conviction proceeding. However, in the opinion the Court cited to *Rees v. Peyton* and to

⁷ This issue was squarely before the lower court. Appellant filed a prehearing brief (Attachment 7) delineating these arguments. Further, counsel for the next friend asserted these authorities and arguments, and more, at the hearing conducted on June 12, 2006. *See* Transcript of June 12, 2006 Hearing (Attachment 8).

federal cases which apply this competency standard in next friend litigation, for example, *West v. Bell*, 242 F.3d 338, 341 (6th Cir. 2001) (“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”); *Brewer v. Lewis*, 989 F.2d 1021, 1026 (9th Cir. 1993) (“meaningful evidence that [the inmate] was suffering from a mental disease, disorder, or defect that substantially affected his capacity to make an intelligent decision”); and *Whitmore v. Arkansas*, 495 U.S. 149 (1990) (“meaningful evidence that he was suffering from a mental disease, disorder, or defect that substantially affected his capacity to make an intelligent decision”).⁸

4. Application of the *Nix* standard of competency in this case would violate the U.S. Constitution, Amendments 5, 8, and 14. The *Nix* standard solely contemplates whether a petitioner is unable either to manage his personal affairs or to understand his legal rights and liabilities. *Nix* at 463. This standard does not address whether a mental illness or defect is affecting a person’s ability to exercise or waive his legal rights, an integral inquiry in *Rees v. Peyton* and Supreme Court Rule 28, § 11.⁹

⁸ The opinion also cites state next friend cases which apply the *Rees v. Peyton* standard or a higher standard, e.g., *State v. Ross*, 863 A.2d 654, 662 (Conn. 2005) (“defendant is competent to waive further challenges to death sentence when ‘he has [the] capacity to appreciate his position and make a rational choice with respect to continuing or abandoning further litigation’”); *Commonwealth v. Haag*, 809 A.2d 271, 279-80 (Pa. 2002) (“In discussing the judicial inquiry into the degree of competency that satisfies the *Whitmore* standard, we stated that it “is not dependent upon the use of certain magic words to describe the prisoner’s competency or lack thereof, but instead requires that the fact-finder make a conscientious effort to determine whether the prisoner is capable of making a rational decision to forego the potential avenues of appeal that are available to him.”); *Franz v. State*, 754 S.W.2d 839, 843 (Ark. 1988) (criticizing *Rees* and adopting “higher criterion” to include “capacity to understand the choice between life and death and to knowingly and intelligently waive any and all rights to appeal his sentence”) (overruled on other grounds by *State v. Robbins*, 5 S.W.3d 51, 55 (Ark. 1999)).

⁹ The Tennessee Supreme Court has previously recognized, in the unpublished opinion and order in *State v. Paul Dennis Reid, Jr.*, No. M1999-00803-SC-DDT-DD (Tenn. 2003) (memorandum opinion and order) that the appropriate standard of competency when determining whether a potential petitioner may forego

5. The *Nix* standard applies to a non-capital petitioner's¹⁰ failure to file a post-conviction petition within the one year statutory time limitation in Tenn. Code Ann. § 40-30-106(b). A petitioner's cognitive ability regarding understanding when he must file a lawsuit is very different from the cognitive abilities required to make a knowing, intelligent, voluntary, and competent decision whether to pursue or waive available legal remedies. "*Competency* is a broad concept, encompassing many different legal issues and contexts." Kaplan & Sadock, *Comprehensive Textbook of Psychiatry*, 3981 (8th Ed. 2005). "In general, *competency* refers to some minimal mental capacity required to perform a specific, legally recognized act or to assume some legal role." *Id.* The specific acts and legal role of a capital post-conviction petitioner are those necessitated by the requirements of Tenn. Code Ann. § 40-30-107(b)(1) and Tenn. Sup. Ct. R. 28, § 6(C). So the standard must relate to those tasks.

6. The ability to understand one's legal rights and liabilities is a more minimal inquiry than the question of whether a mental illness or defect is affecting one's ability to make a knowing, intelligent, and voluntary choice among legal options, and is akin only to the "knowing" prong of the latter standard. Further, the other component of the *Nix* standard -- ability to manage one's "personal affairs" -- generally relates to a person's ability to manage their money, conduct business, make decisions regarding their health care, associate with friends and family, and so forth. These are not issues with a clear nexus to a petitioner's ability to make rational, knowing, and voluntary decisions about capital post-conviction litigation.

his right to file a post-conviction petition is *Rees v. Peyton*, 384 U.S. 312, 314, 86 S.Ct. 1505, 1506, 16 L.Ed.2d 583 (1966). In that case, the Court inquired as to "Mr. Reid's present capacity to understand his legal position and options or to make a rational choice among these options." *Id.* at 3.

¹⁰ Petitioner *Nix* was not under death sentence. The heightened need for reliability in capital cases requires a different tolling standard for a capital petitioner who files after expiration of the statute of limitations.

7. On May 15, 2006 a Petition to Rehear in the Tennessee Supreme Court was filed. To counsel's knowledge the Court has not yet ruled on the Petition to Rehear.

B. The Circuit Court abused its discretion by finding Appellant had not made a prima facie case that Mr. Reid is incompetent.

1. At this stage of the proceeding only pleadings have been filed. The next friend for Mr. Reid, as required, in these pleadings established a prima facie showing of present incompetency. The information tendered below more than establishes a prima facie case of incompetence, under either *Rees* or *Nix*.

Dr. George W. Woods, Jr., M.D.

- Dr. Woods evaluated Mr. Reid on two occasions and reviewed multiple records, including reports of previous mental health experts, testimony of these experts, neuroimaging reports, and neuropsychological testing, in formulating his diagnosis.
- Mr. Reid suffers from a neurological disorder -- left temporal lobe dysfunction. The temporal lobe dysfunction has produced in Mr. Reid a chronic, schizophrenia-like psychosis which has severely impaired his ability to weigh, deliberate, inform and cooperate.
- Mr. Reid is presently incompetent under both the *Rees v. Peyton* and *Nix* standards.
- Mr. Reid's neuropsychiatric presentation reflects frank paranoia, manifested by a longstanding, relatively well-circumscribed delusion.
- Mr. Reid's delusion, that he has been under the control of a government-directed surveillance and influence, impels, invades, and guides his daily activities as well as decision-making processes.
- Mr. Reid's delusional beliefs substantially preclude him from making a rational choice among his legal options.
- Mr. Reid currently has persecutory, paranoid delusions that "the military government" is using "scientific technology" to torture him.
- Mr. Reid sees execution as the only means of ending the torment due to failed promises in the past that the "scientific technology" will be "turned off."

- As a result of that delusion, Reid is incompetent to decide whether to pursue a post-conviction petition on his own behalf or abandon that right.
- Mr. Reid currently is suffering from perceptual and memory impairments which render him unable to reliably relate events of his trial.
- Mr. Reid's delusional beliefs that current counsel are members of the conspiracy against him preclude rational communication regarding his legal options and thus he is unable to perceive and understand his legal right and liabilities in any meaningful sense.
- Mr. Reid's beliefs that scientific technology is employed in a continuous basis upon his mind and person also interfere with his ability to manage his personal affairs. For example, he believes that scientific technology controls and "coaches" correctional officers, other inmates, and literally everyone with whom he comes into contact.
- Mr. Reid believes that the military government controls his ability to receive mail, receive gifts from others, and obtain items from the commissary.
- Mr. Reid experiences certain events as "repeats" which have occurred previously when they have not.
- Dr. Woods is willing to testify to these facts if provided sufficient funds to secure his presence in court.¹¹

Kelly A. Gleason (attorney in Reid's Davidson County post-conviction and appeal)

- She has practiced law for over fourteen years, primarily representing capital defendants.
- Gleason has represented Mr. Reid since August 2004.
- Gleason believes, based upon her observations of and interactions with Mr. Reid over a lengthy period of time, that he is not currently competent in that Mr. Reid suffers from a severe mental and/or neurological illness which substantially affects his capacity to make knowing, intelligent, and voluntary decisions about his legal situation.
- The affidavit is forty-two pages and in detail describes her observations and interactions with Mr. Reid in person and by telephone by date.

¹¹ The lower court concluded as a matter of law that Dr. Woods' findings, and the other proffers by counsel, were not specific and detailed enough to satisfy even a prima facie showing of incompetency. Given the detailed allegations, the lower court's legal conclusion is too strained. Dr. Woods again evaluated Mr. Reid on June 20, 2006, and came to the same conclusions he earlier reached and which are not in dispute. Only a legal question is in dispute at this juncture, *i.e.*, what does "prima facie" require?

- During the entire time Gleason has represented Reid, his delusional beliefs have been persistent and have pervaded his thinking about all aspects of his life.
- Reid's delusional beliefs have caused him to either refuse to discuss legal issues with Gleason, as he believes it is futile, or to discuss only the specific delusional beliefs he holds about his trial attorneys, the trial judges, the jurors, witnesses, courtroom personnel, state and federal appellate courts, the media, the governor, the president, congress, Department of Correction personnel – literally everyone.
- Reid told Gleason that he knew she was working with the military government and that he could not believe a single word she said or anything she wrote.
- Reid said he was a “lab rat” and “guinea pig” for the military intelligence since 1985 and could not lead a normal life.
- Reid refused to make a list of what he felt that his trial attorneys did wrong or did not do since he felt there was no point because the trial attorneys and everyone at the trial was coached.
- Reid said he had been framed and that he couldn't have done this crime because he was aware that the military intelligence was always taping him and watching his every move. Reid would not have committed the crimes since he knew that he would be taped if he did so and the military intelligence could use the tapes to prove it.
- Reid believes the military intelligence is causing ringing in his ears and prickly sensations on his skin.
- Reid believes that Don Dawson, the Post-Conviction Defender, and Gleason's co-counsel Nick Hare are part of “the evil government military.”
- Reid believes he met Gleason a year before they actually met.
- Reid stated that Gleason is not a lawyer and asserted that had no way of knowing if she was since everything is controlled by the government military.
- Reid has heart pains, and pains in his left arm, but refuses to call the doctor, since he believes the pain is the product of the “scientific technology people.”
- Reid believes the “military government” plants recurring dreams in his mind of his father and sister Janet being killed. He believes the military government killed his father, who died of cancer in 1997, with scientific technology.

- Reid believes that people speak to him in “cryptic language” which is intended for him to hear.
- Reid stated that attorney Mark Olive sent him cryptic messages to him from the military government in federal court in April 2003.
- When meeting with counsel, Reid has brought papers with him on which he had written “REPEAT” and another with “BE CIRCUMSPECT, ATTORNEY’S ARE COACHED TO REPEAT.” He stated that this was a reminder to himself not to go into “irrelevant” matters such as his trial.
- Reid stated that the scientific technology runs the internet letter through his head constantly; he hears it read to him. They will not let him sleep; they cause terrible ringing in his ears.
- Reid said scientific technology puts a “force on his mind” to keep him in misery.
- Reid believes that Don Dawson, Nick Hare, and the scientific technology people had him placed at Brushy Mountain to torture him and try to make him insane.
- Reid described how scientific technology can radiate his body and then use some kind of magnetic tapes to record the activity going on in his brain.
- Reid told Gleason that if Gleason would ask whoever coaches her, tells her what to say and do and to repeat herself, that would provide a lead and draw Gleason back “to a nucleus, to a core, to a hub of people” that are using scientific technology against Reid.
- Reid told Gleason that he recognizes people and events “repeating” but doesn’t mention that he knows that about “95, 98” percent of the time.
- Reid said scientific technology caused George Bush, Sr. to pass out in 1992 when dining with the prime minister of Japan and George Bush, Jr. to pass out in 2000 while eating a pretzel in the White House. He said they wanted to do that for him, to have him see they could.
- Reid said the scientific technology people tell him “we got our hand up Kelly’s ass, we’ve got our hand up Connie’s ass, we’ve got our hand up Nick’s ass and they’re our puppets.”
- Reid said “they” coached Judge Blackburn what to say during the trial and Reid knows that because there’s no way that Judge Blackburn could have known to repeat what he said from 1985 to 1990 at Ellis II under his breath unless they told her.

- Reid said that [prosecutor] Tom Thurman said things during the trial which there was no way he could have known to say unless coached by scientific technology.
- Reid said “they” had a juror during the Captain D’s trial go into a jury room where no one could see him with the door open and point his finger at Reid and say “we’ve got you, we’ve got you.”
- Reid said the jurors were hand-picked and coached to find Paul guilty before they knew what he was charged with.
- Reid said five or six of the jurors in the Clarksville trial made eye contact with him after a bailiff intentionally opened up the jury door while Reid walked by. The jurors looked at him and started laughing.
- Reid said Judge Gasaway could see that episode with the jurors and that Judge Gasaway was coached to say things that no one else would have known he was saying except Paul Reid.
- Reid said he no longer feels he needs to talk to Americans since they’ve been coached to play mind games on him. “They” coach inmates, guards, and staff what to do and say around him. “They” reduced the guards to act like juveniles.
- Reid said that scientific technology had transferred David Baker to the federal defender’s office and that his legal teams have all been coached to do nothing for him.
- Reid said that “they” wake him up in the morning unnaturally, energy pumping through him, instead of coming slowly awake and stretching.
- Reid said he has to work very hard not to be upset with Gleason, since he knows she’s coached. The guards are coached, the inmates, the judge, the DA, his attorneys but Reid tries not to pay attention, and instead just stay calm.
- Reid said he was known everywhere he went since everyone is subject to scientific technology, which informs them. He believes that when he first came to Nashville, people recognized him at the grocery store because scientific technology alerted them. He believes he is recorded wherever he goes.
- Reid said that because everyone knew him, if he had committed the crimes at McDonalds or Baskin Robbins, witnesses would have called the police and told them it was Paul Reid. He believes this proves he didn’t commit the crimes.
- Reid asked Gleason if she had been taken somewhere and shown the machines or devices and how knobs or switches are turned to keep him under scientific

technology. Reid said he believes there is a panel board and computers and other equipment somewhere.

- Reid told Gleason that he did not believe a hearing was conducted on his case in Davidson County on January 17, 2005. He said because he didn't see the judge and the prosecutor, he would not accept that what Gleason said happened was true.
- Reid said that on January 17, 2005, Gleason and Hare left the office, got in a car, went to the courthouse, saw Reid in the holding tank, and went back to the office. Paul said that later Gleason returned alone and it was a total hoax, no hearing was conducted, and it was a "premeditated repeat."
- Reid said legal issues are a waste of his time since everything is controlled by the military government.
- Reid told Gleason that he cannot wait to get his execution date to stop the torture. Reid said scientific technology takes away any will to fight for himself, any desire to vindicate himself, and "eradicates any inkling to mitigate."
- Reid described how "they" come back every day and tell Reid he will be a millionaire and that he will win Captain D's and McDonald's cases and go to Texas. He said that he knows they use a code, and he gets flickers in his toes and fingers and an orange taste on his tongue.
- Reid described to Gleason how 15 or 30 minutes before the guards came to take him for a shower, his head was filled with euphoria and joy so that he would be bubbly and vivacious when the guards arrive.
- Reid refused to speak to Gleason about potential witnesses in Texas.
- Reid told Gleason scientific technology sent him to Brushy to torture him. They put suicide thoughts on his brain. Paul has acted on them six or seven times.
- Reid said every word of his is recorded and the scientific technology people can see what he can see -- that's how they get people to repeat actions.
- Reid told Gleason that he was at the center of the greatest military conspiracy of all time, a multi-billion dollar project.
- Reid asked Gleason to find a way to show on a tv screen a diagram of the brain and how scientific technology can erase memory, cause amnesia, deprive sleep, implode organs, and record eyesight.

- Reid told Gleason that Mark Olive had offered at the April 2003 federal court hearing to turn off the scientific technology and Reid accepted the offer, which he now believes to be a mistake.
- Reid described to Gleason scientific technology's efforts to make him a homosexual at Ellis II. These efforts included having one of the hundreds of people controlling scientific technology in 1987 to put a thought into Reid's head "let's get naked and get in bed together."
- Reid demanded that Gleason tell him what scientific technology had coached her to repeat to him. When Gleason explained that she did not know, Reid said he didn't believe a word she said anyway.
- Reid said scientific technology makes his mind foggy, puts orange taste in his mouth, and "pops his anal" to let him know that he's at the "asshole end" of scientific technology.
- Reid described to Gleason how the government military showed his family spliced video tapes, piecing words and syllable together to make him appear homosexual.
- Reid told Gleason that prosecutor Tom Thurman said Paul didn't wash his face one time and that there was no way Thurman could have known that unless he saw the tapes.
- Reid said the guards leave out their shirt tails to send him a message that he's at the tail end of scientific technology.
- Reid told Gleason that scientific technology has tried to talk to him through the tv but he avoids talking about the tv. They count the number of times he wipes his "anal."
- Reid said the military government would kill Connie Westfall and Kelly Gleason if they were perceived as a threat to the military government.
- On July 22, 2005, Reid told Gleason that he wanted her to represent him in the Clarksville case, if anyone was going to. Gleason gave Reid a draft motion for appointment and explained the mechanism for filing a post-conviction petition. Reid claimed he would read them over later.
- Reid told Gleason that he got word that in April of 1987 "they" were going to turn off scientific technology but they reneged. Reid realized this when he woke up to find orange seeds in his navel.
- Reid told Gleason that Judge Campbell used "body language" at the federal hearing in April 2003 to send Reid messages. Reid said he was coached to do

so and [prosecutor] Kathy Morante used body language as well, to say it wasn't real, and not to panic.

- Reid told Gleason that thousands of people around him were part of a conspiracy against him there from 1973-1982. Reid said this conspiracy predates scientific technology and private citizens – bankers, housewives, oil workers -- were focused on his every move.
- Reid said that scientific technology people lie to him every time they make promises about the end of the torture. Reid said he asks himself when it will stop and the answer is never but they still try to manipulate him. Reid said he has them over a barrel when he has an execution date, since it shows they don't control him.
- Reid told Gleason the scientific technology tried to wear him down to back down from the October 5, 2005 execution date and would do so in June 2006 as well. He said that Gleason will try to get him to sign papers and that his family will cry but it will be nothing but a lie -- scientific technology will tell him he needs to sign the papers but it's "just lie, lie, lie since 1985." He said all "they" do is manipulate and tantalize him.
- Reid told Gleason that "they" have abolished any dream or vision from him. Reid said "they" have increased the pressure on his ears and brain as he spoke with Gleason, making it worse.
- Reid told Gleason that she had threatened to take his tv away from him if he wouldn't answer her questions. He recounted to her an incident which never happened.
- Reid told Gleason that scientific technology put it on his head for three days to think that the people running scientific technology are "lesbian, homosexual bachelorettes" and that they like Reid liking Gleason and Westfall. Reid said that they normally like him to like only men, not women, and had done that for two or three years.
- Reid told Gleason that Pam Auble "defiled" him on the witness stand and she was set up by scientific technology to do so.
- Reid told Gleason "we'll fight against the evil scientific technology, even though they are trying to get me to hate you and Connie."
- Reid said that attorney Mark Olive had promised in April 29, 2003 to shut off the scientific technology, find the real killers, and give him his promised money. Reid thought federal court was the "real deal" and this would happen.

- Reid told Gleason about how much he enjoyed living until 1985 and now what they do to his ears, mind, and body is unbearable.
- Reid told Gleason that she is coached to come up to Brushy and give him stern looks and harsh stares. Reid said God has given him mental strength so that Gleason cannot “defeat him.”
- Reid told Gleason that God has given him supernatural powers to resist scientific technology. Reid said he has reduced scientific technology to a follower and “taken human beings out of the equation.” Reid said he realized that the only way scientific technology can influence him is through human beings, so he has shut them out.
- Reid told Gleason that Pam Auble and Judge Cheryl Blackburn had notes from scientific technology during his trial. Reid said they were “working in conjunction” and the theme was to get the whole story out. He said that Chris Clark and Jennifer Krause told all about it in their reports. Reid said scientific technology had them run the story.
- Reid told Gleason that scientific technology coached his attorneys to work with the District Attorney and put him in the penitentiary. Reid said he should never have been indicted, he’d been set up from the beginning. Reid then recounted scientific technology’s efforts to kill him,
- When Gleason informed Mr. Reid of the Tennessee Supreme Court’s opinion of May 4, 2006 and the factual errors therein, Reid asked Gleason if the scientific technology told the Tennessee Supreme Court to mess everything up so that they would get more time to torment Paul, because the Sixth Circuit or some other court would believe they needed to fix the Tennessee Supreme Court’s errors.

AFFIDAVIT OF CONNIE WESTFALL (investigator)

- Ms. Westfall was assigned to the Paul Dennis Reid case on May 1, 2003 and visited him on many occasions, alone and in the company of the attorneys.
- Westfall was asked to monitor Reid’s mental state and attempt to maintain a relationship of communication and trust to the extent possible.
- Westfall observed that the isolation to which Mr. Reid is subjected at Brushy Mountain State Prison has contributed to the deterioration of his tenuous and fragile mental state.
- When Reid seemed confused about the role of the post-conviction defender, Westfall drew a diagram of the three levels of appeals – trial, post-conviction, federal – then explained what the office does. Reid had no further questions.

- From May 29, 2003, until February 19, 2004, Mr. Reid did not discuss any legal issues with Ms. Westfall. Reid's only interest was in educating her to the government military's control over his life since 1985 and the effects of the "scientific technology" used to torture him.
- On February 19, 2004, Westfall escorted attorney Jay Williams of Shiff-Hardin, LLP in Chicago to Brushy Mountain to meet Paul Reid. Reid would not engage in a discussion of his case with Williams, except to agree to let Williams represent him pro bono. Instead, Reid focused on attempting to impress Williams with his broad base of knowledge, including his knowledge of Oprah Winfrey.
- On October 12, 2004, Westfall and Nick Hare and visited Reid at Brushy. When Hare asked Reid to explain to him what he wanted him to do as his attorney, Reid said there was nothing he could do as he was controlled by the government military and if he could do anything, the only thing he wanted was for Hare to get the scientific technology turned off.
- On January 18, 2005, Westfall visited with Reid alone at Riverbend. Reid was transported to Nashville for a hearing held in Judge Blackburn's court the day before. However, Reid said many times during the visit that the court hearing and all that was said was a "repeat" from last year; in addition, each thing Reid and Westfall discussed on January 18 was a "repeat" from before with the exception of the last minute arrangement to keep him at Riverbend for two more weeks.
- Reid told Westfall that the most important thing on Reid's mind on January 18, 2005 was his desire to make sure the world can see that scientific technology is being used on him.
- Reid told Westfall that at the hearing, everyone at the courthouse "repeated exactly what they have said before," including the bailiff and court officers. Reid said "It's all a big sham, even the weather is identical!"
- Reid told Westfall that there was no hearing on January 17 and Rosalie Kraft, a legal secretary, and Westfall were not in the courtroom; further, Gleason and Hare were in their offices, drove to the courthouse to meet with him then drove back; later in the day Gleason alone drove back to the courthouse to meet with Reid.
- Reid told Westfall that items have been removed from his cell at the direction of the government military. He said the scientific technology "radiates" his brain making his thinking "fuzzy and foggy," he becomes "confused" and can't "think vividly clear." Reid said they interfere with his sleep, ring his ears and "flicker" his body. He said every moment of his life is recorded.

- Reid told Westfall that they repeatedly run the same dreams through his head. Reid said inmates and guards repeat the exact words and actions as the year before -- they scratch their heads in the same manner and use their eyes in the same manner.
- Reid told Westfall that the government military has unlimited resources and power, and use these powers to send cryptic messages to him, such as causing an airplane to crash on his birthday, blowing up the Challenger space craft over his home state of Texas. Reid said they caused both Presidents Bush to choke; they intended for Reid to be at Oklahoma's Murrah Federal Building when it was bombed; they caused JFK Jr. to black out and crash his plane.
- Reid told Westfall that the way she was sitting, with her right fist on her right cheek, was a repeat. He said she would not know to do it again unless she was coached to do it by the government military scientific technology. He went on to say, "Common sense says if you can repeat the exact actions, you have to be coached." Reid said that when Westfall and Gleason talk about him at the office or anywhere else, "they" listen to Westfall and Gleason just like they do his family and anyone else who comes into contact with him.
- Reid told Westfall that as he gets closer to death watch, the scientific technology steps up the intimidation by telling him he will go free, they "talk to" Reid about what he wants to spend his million dollars on. Whatever he says he wants, they assure him he can have it. "They" tell him the real culprit will be caught and all his dreams will come true, he'll live a good life in Houston.
- Reid looked at Gleason during one visit and accused her of doing nothing to prove scientific technology exists, of not finding one document to present to the court. Reid then told her to go to hell, to hell with her feelings as she's done nothing to help him. Reid exclaimed "What about what I have endured for twenty-one years!"
- Reid complained to Westfall and Gleason that the scientific technology was making his "mind foggy and fuzzy." He denied death row inmate Tony Carruthers was being held at Brushy Mountain and was angry with Gleason for saying it, telling her never to mention it again.
- Reid told Westfall that he does not believe anything from any outside influence, not Kelly Gleason, not Westfall, not any other lawyer, not his family ... not anyone but himself.
- Reid recounted to Westfall a list of "repeats," virtually everything he's been told over the last several years. Reid got his stories and facts mixed up. He focused much of his frustration on Westfall, claiming that she lied to him about everything, he can't trust her. Reid called Westfall a "snake in the grass."

- Reid became upset with Westfall and Gleason because of his belief that they won't be honest with him about the scientific technology. Reid said his father [now deceased] told him the truth about seeing the videos and talking to the "scientific technology people." With this "proof" Reid can't understand why Westfall and Gleason won't tell him that they have meetings with "them" and are coached what to say and do around him.
- Reid told Westfall that if he lives, the scientific technology people win. He said their motive is to keep him locked up for the next fifty-one years to torture him. Reid said going forward with his execution is a sign that he is "smart" and "intelligent" to have figured it out and to use his execution against them.
- Reid told Westfall that "they" woke him up in the morning and "put a crying feeling on [him]." Reid believes they want him to think he doesn't want to die but he is said he is "certain those are not my feelings." Reid said the scientific technology puts "those feelings" on his brain to confuse him.
- Westfall noted that "Reid has never been able to discuss his case(s) in a meaningful way with his attorneys in my presence. From my lay perspective, he has descended completely into his delusion; he has no reference point he can trust or rely on, he has only himself in which to believe."

AFFIDAVIT OF LINDA MARTINIANO

- Mrs. Martiniano is Paul Reid's sister. She resides in Texas but visits her brother annually and receives regular letters.
- Based upon her visits with Reid, the letters she has received from him, and her knowledge of her brother, Mrs. Martiniano believes that Paul Reid is severely mentally ill. She said he does not think or act in a rational manner.
- Mrs. Martiniano said that "everything he does is guided by his belief in a government conspiracy against him to bombard him with 'scientific technology.'" When Reid has talked to her about giving up appeals and being executed, he talks about ending the torture of the scientific technology.
- Mrs. Martiniano believes her brother is not capable of making a rational decision and has asked the Office of the Post-Conviction Defender and attorneys in that office to represent her so that she may act in the place of her brother to protect his interests.
- Mrs. Martiniano loves her brother and does not wish for him to be executed or abandon his appeals unless and until he can make that decision as a competent person and not as a product of his severe mental illness.

AFFIDAVIT OF JAMES A. SIMMONS

- Mr. Simmons is an attorney who represents Mr. Reid on direct appeal currently and represented him in the direct appeal of the Montgomery County convictions and sentences. He has represented Mr. Reid for several years during these appeals.
- Mr. Simmons has practiced law for twenty-three years, and represented scores of capital defendants in state and federal court at trial, appeal, and upon post-conviction.
- Mr. Simmons has met with Mr. Reid on several occasions and attempted to discuss his legal affairs. During the entire time he has represented Mr. Reid, he has never been able to have a rational conversation with him about his cases. Reid will not even engage in discussions about his cases.
- Mr. Simmons reports that Mr. Reid's primary interest has been in discussing his sincere delusional belief that everything he says and does is recorded by the military government and that they are torturing him with "scientific technology." Simmons states that Mr. Reid also believes that everyone in his life, Simmons included, is "coached" regarding what to do or say by this nonexistent entity.
- Simmons states that he believes, based on his personal interactions with Mr. Reid and the letters Reid writes to him, that Reid is currently "completely out of touch with reality." Simmons notes that over the years, he has watched Reid's mental condition, "which was always very bad, deteriorate."
- Simmons states he "does not believe [Reid] can make rational decisions about his legal options. I do not believe he can make his own medical decisions, because he is not even aware that he is severely mentally ill."
- Simmons states that he would have raised the issue of Reid's incompetency on direct appeal had his legal research provided authority to do so. Further, he would have sought money for expert assistance if the law so provided.
- Simmons states that if he had not been assured that Gleason and Hare were in contact with Mr. Reid's family and willing to assist them with a next friend action, he would have contacted the family and assisted them in filing such an action.

Also, during the non-evidentiary hearing, letters which Mr. Reid wrote to his sister, Linda Martiniano, were introduced as exhibits for the court's consideration. The letters are consistent with the facts outlined above.

When a defendant's competency has been in doubt in the past, and present information indicates a genuine issue as to present competency, due process requires that a competency hearing be conducted. The information before the Montgomery County Circuit Court was more than enough to justify further inquiry. *See, e.g., Cogburn v. State*, 281 S.W.2d 38, 39-30 (Tenn. 1955) (a court must initiate an investigation into competency if it "has facts brought to its attention which raise a doubt of the then sanity of the accused"); *State v. Taylor*, 771 S.W.2d 387 (Tenn. 1989) (citing *Drope v. Missouri*, 420 U.S. 162, 95 S.Ct. 896, 908, 43 L.Ed.2d 103 (1975)) ("irrational behavior," demeanor, and "any prior medical opinion are all relevant" to present competency); *Bishop v. Superior Court*, 724 P.2d 23, 27-28 (Ariz. 1986) ("It is counsel who spends time with a defendant in a manner which allows observation of the facts necessary to determine the issues to be decided at the competency hearing. Unlike any of the adversarial issues, on the question of competency to comprehend the proceedings and assist the attorney, the defense lawyer is often the most cogent witness."); *Wilcoxson v. State*, 22 S.W.3d 289, 310-311 (Tenn. Crim. App. 1999) (counsel ineffective for failing to raise client's competency as an issue when client had previously been diagnosed with schizophrenia and bipolar disorder, had previously taken antipsychotic medication, and claimed powers of mind control); *People v. Stankewitz*, 648 P.2d 578 (Cal. 1982) (competency hearing should have been conducted where defense counsel voiced doubts about defendant's competency and a psychiatrist testified that defendant's delusional and paranoid thoughts prevented him from cooperating in the conduct of his defense); *Lafferty v. Cook*, 949 F.2d 1546 (10th Cir. 1991) (defendant with a factual understanding of the proceedings against him was incompetent as he lacked a rational understanding of

the proceedings because of his paranoid delusional system); *Pate v. Smith*, 637 F.2d 1068 (6th Cir. 1981) (Petitioner was entitled to a competency hearing once the state trial court entertained doubts about his competency.); *Harper v. Parker*, 177 F.3d 567 (6th Cir. 1999) (State-provided collateral counsel properly represented the petitioner because once petitioner's competency was put in question, he could not waive his right to have his competence determined, and state-provided counsel were necessary to complete judicial review of issue; district court properly held a preliminary hearing to determine whether there was sufficient evidence of incompetency to require a full evidentiary hearing.); *Drope v. Missouri*, 420 U.S. 162, 95 S.Ct. 896, 908, 43 L.Ed.2d 103 (1975) (competency hearing should have been conducted in light of petitioner's suicide attempt combined with his history of bizarre behavior and diagnosis of "borderline mental deficiency" and "chronic anxiety reaction with depression").

C. Do the due process clauses of the state and federal constitutions require the court to permit the presentation of evidence during a hearing to determine whether a next friend has established a prima facie case that a death-sentenced prisoner is not competent to decide whether to initiate state post-conviction proceedings?

The next friend flew in from Texas anticipating that she would testify on her brother's behalf at a hearing. *See* Transcript of Hearing of June 12, 2006 (Attachment 8). Counsel intended to present testimony at the hearing. *Id.* The court ruled that no testimony would be permitted. *Id.* The ruling violated Mr. Reid's rights to due process, access to the courts, equal protection, and protection from cruel and unusual treatment under the state and federal constitutions. Amendments 1, 5, 6, 8, and 14, U.S. Constitution; Article I, § 8, 9, 16, 17 ("[A]ll courts shall be open and every man, for an injury done him shall have remedy by due course of law."), Tennessee Constitution. *See*,

e.g., *John L. v. Adams*, 969 F.2d 228 (6th Cir. 1992); *Evitts v. Lucey*, 469 U.S. 387, 396, 105 S.Ct. 830, 836, 83 L.Ed.2d 821 (1985); *Halbert v. Michigan*, 545 U.S. ___, 125 S.Ct. 2582, 2586, 162 L.Ed.2d 552 (2005).

D. Do the due process clauses of the state and federal constitutions require the court to order the presence of a death sentenced prisoner in a proceeding at which the court will decide whether a prima facie case of the prisoner's incompetence has been demonstrated?

The trial court ordered Mr. Reid to be transported to the Montgomery County courthouse the day of the hearing. *See* Transcript of Hearing of June 12, 2006. The court inquired of undersigned counsel whether counsel had a position on Mr. Reid's presence during the hearing. *Id.* Counsel Gleason responded that, since Gleason and Hare were not appointed to represent Mr. Reid in this matter unless and until the court so found, counsel were not able to take a position at all. *Id.* The court ordered that Mr. Reid be returned to prison without attending the hearing. *Id.*

This ruling violated Mr. Reid's rights to due process, access to the courts, equal protection, and protection from cruel and unusual treatment under the state and federal constitutions. Amendments 1, 5, 6, 8, and 14, U.S. Constitution; Article I, § 8, 9, 16, 17 (“[A]ll courts shall be open and every man, for an injury done him shall have remedy by due course of law.”), Tennessee Constitution. *See, e.g.*, *John L. v. Adams*, 969 F.2d 228 (6th Cir. 1992); *Evitts v. Lucey*, 469 U.S. 387, 396, 105 S.Ct. 830, 836, 83 L.Ed.2d 821 (1985); *Halbert v. Michigan*, 545 U.S. ___, 125 S.Ct. 2582, 2586, 162 L.Ed.2d 552 (2005).

E. Do the due process and equal protection clauses of the state and federal constitutions require the court to conduct a colloquy with the prisoner regarding his intention and competency to make a knowing, intelligent, and voluntary waiver of post-conviction proceedings where the state requires such a colloquy for dismissal of

a pending post-conviction action and waiver of available proceedings will result in the prisoner's execution?

For the reasons stated *supra*, the trial court's failure to conduct a colloquy with Mr. Reid on June 12, 2006 constitutes a violation of state and federal constitutional protections. Tenn. Sup. Ct. R 28, Sec. 11, mandates that a waiver of pending capital post-conviction proceedings, specifically dismissal of a pending post-conviction petition, be explicit and done in open court, so that the trial and reviewing courts can determine that the waiver is knowing, intelligent, and voluntary. *See also Pike v. State*, 164 S.W.3d 257 (Tenn. 2005).

Failure to extend the same protections to Mr. Reid, at the initiation stage of proceedings, violates Mr. Reid's rights to due process, access to the courts, equal protection, and protection from cruel and unusual treatment under the state and federal constitutions. Amendments 1, 5, 6, 8, and 14, U.S. Constitution; Article I, § 8, 9, 16, 17 (“[A]ll courts shall be open and every man, for an injury done him shall have remedy by due course of law.”), Tennessee Constitution. *See, e.g., John L. v. Adams*, 969 F.2d 228 (6th Cir. 1992); *Evitts v. Lucey*, 469 U.S. 387, 396, 105 S.Ct. 830, 836, 83 L.Ed.2d 821 (1985); *Halbert v. Michigan*, 545 U.S. ___, 125 S.Ct. 2582, 2586, 162 L.Ed.2d 552 (2005).

F. If, as the court below found, and the State asserts, the court below is without jurisdiction to enter a stay of execution upon dismissal of a post-conviction petition filed by next friend, although the court would clearly have jurisdiction to enter a stay upon summary dismissal of a post-conviction petition filed under a prisoner's signature, are Mr. Reid's rights to due process, equal protection, and access to the courts to effectuate an appeal of right, under the state and federal constitutions, violated?

It is clear that if Reid had filed a signed post-conviction petition which the trial court dismissed, a stay would be entered while he pursued an appeal of right. T.R.A.P.

3(b); Tenn. Sup. Ct. R. 28, Sec. 10(A) ("An appeal from the dismissal or denial of a post-conviction petition shall be in accordance with the Tennessee Rules of Appellate Procedure."); Tenn. Code Ann. §40-30-116 ("The Order granting or denying relief under the provisions of this part shall be deemed a final judgment, and an appeal may be taken to the court of criminal appeals in the manner prescribed by the Tennessee Rules of Appellate Procedure."); Tenn. Code Ann. §40-30-120(a) ("Upon the filing of a petition for post-conviction relief, the court in which conviction occurred shall issue a stay of execution date which shall continue in effect for the duration of any appeals or until the post-conviction action is otherwise final.")

Further, it is clear that if Mr. Reid chose to dismiss a pending post-conviction petition and was competent to do so, a stay would be granted until his appeals were completed. *See* Tenn. Sup. Ct. R 28, Section 11(c):

Whenever a trial court determines that the petitioner is competent to withdraw the petition, the order of the trial court finding the petitioner competent and dismissing the petition may be appealed under T.R.A.P. 3. If the trial court has granted a motion for dismissal of post-conviction counsel; post-conviction counsel shall nonetheless have standing to appeal the sole question of whether the petitioner was competent to withdraw the petition. The issue of competency will be reviewed as an issue of fact and the trial court's finding will be presumed correct, unless the evidence in the record preponderates against it.

Further, it is clear that if Mr. Reid were under a sentence of life without parole, life, or a term of years, his next friend would be able to appeal the finding of an insufficient prima facie case to warrant a next friend post-conviction petition. *See State v. Nix*, 40 S.W.3d 459 (Tenn. 2001), wherein petitions filed by next friend were dismissed as late-filed and appeal was taken to this Court. This Court found insufficient allegations in the petitions to satisfy a prima facie showing of incompetency and the

Supreme Court affirmed. *See also Seals v. State*, 23 S.W.3d 272 (Tenn. 2000), involving the appeal of dismissal of a post-conviction petition filed by next friend. Following remand for further proceedings in *Seals I*, the post-conviction court found an insufficient prima facie showing under *Nix*. *See Seals v. State*, No. E2001-01756-CCA-R3-PC (Tenn. Crim. App. 2002) (Not for Publication), perm. to appeal denied, Nov. 4, 2002, 2002 WL 1482772 at p. 2 (copy attached as Attachment 9). This Court affirmed the lower court upon a T.R.A.P. 3 appeal.

Failure to extend the same protections to Mr. Reid, at the initiation stage of proceedings, violates Mr. Reid's rights to due process, access to the courts, equal protection, and protection from cruel and unusual treatment under the state and federal constitutions. Amendments 1, 5, 6, 8, and 14, U.S. Constitution; Article I, § 8, 9, 16, 17 (“[A]ll courts shall be open and every man, for an injury done him shall have remedy by due course of law.”), Tennessee Constitution. *See, e.g., John L. v. Adams*, 969 F.2d 228 (6th Cir. 1992); *Evitts v. Lucey*, 469 U.S. 387, 396, 105 S.Ct. 830, 836, 83 L.Ed.2d 821 (1985); *Halbert v. Michigan*, 545 U.S. ___, 125 S.Ct. 2582, 2586, 162 L.Ed.2d 552 (2005).

III. LEGAL AUTHORITY MANDATING A STAY

1. Pursuant to Tenn. Sup. Ct. R 28, Section 10, dismissal of a petition is covered under T.R.A.P. 3(b) as an appeal of right and the next friend has thirty (30) days to file a notice of appeal from entry of judgment. *See, e.g., State v. Nix*, 40 S.W.3d 459 (Tenn. 2001), wherein petitions filed by next friend were dismissed as late-filed and appeal was taken to this Court. This Court found insufficient allegations in the petitions to satisfy a prima facie showing of incompetency and the Supreme Court affirmed. *See*

also *Seals v. State*, 23 S.W.3d 272 (Tenn. 2000), involving the appeal of dismissal of a post-conviction petition filed by next friend. Following remand for further proceedings in *Seals I*, the post-conviction court found an insufficient prima facie showing under *Nix*. See *Seals v. State*, No. E2001-01756-CCA-R3-PC (Tenn. Crim. App. 2002) (Not for Publication), perm. to appeal denied, Nov. 4, 2002, 2002 WL 1482772 at p. 2 (copy attached as Attachment 9). This Court affirmed the lower court upon a T.R.A.P. 3 appeal.

2. Thus, the court below clearly has jurisdiction in this case to enter a stay of execution pending appeal. See Supreme Court Rule 28, Section 10(C). Failure to grant the stay in the circumstances herein is an abuse of discretion which this Court should rectify.

3. The Montgomery Circuit Court's Order of June 13, 2006 is a final order denying relief as contemplated by Tenn. Code Ann. §40-30-116 ("The Order granting or denying relief under the provisions of this part shall be deemed a final judgment, and an appeal may be taken to the court of criminal appeals in the manner prescribed by the Tennessee Rules of Appellate Procedure.) When a petition for post-conviction relief is summarily dismissed, petitioner is entitled to an appeal, and where indigent, he is entitled to appointment of counsel. See *Recor v. State*, 489 S.W.2d 64 (Tenn. Crim. App. 1972).

4. The court below, in its Order of June 13, 2006, denied a stay of execution since the petition was not "accepted" and was dismissed. The Order states that "[r]elief from the currently scheduled execution date must be pursued in the appropriate court." However, pursuant to the authorities cited above, and Tenn. Code Ann. § 40-30-120(d) ("Any motion for a stay pending consideration of the post-conviction petition must be

presented first to the court where the petition is filed.”), the court below is the court with jurisdiction to issue a stay pending a TRAP 3(b) appeal of right of the summary dismissal of a post-conviction petition.

5. Mr. Reid’s rights to due process, equal protection, and access to the courts under the Tennessee and United States Constitutions would be violated if his next friend is denied the ability to appeal as of right.¹² Failure to grant the stay of execution is a denial of the rights secured by the due process clauses of the Tennessee and U.S. Constitutions.

6. The next friend requests an expedited hearing on this matter due to the imminent execution date.

IV. PROCEDURAL HISTORY

1. This matter arises from the diligent, timely efforts of the next friend and undersigned counsel to alert the courts to serious questions regarding Mr. Reid’s present incompetency. In brief summary of the history of this case, the Supreme Court affirmed Mr. Reid’s convictions and death sentences in this case on May 24, 2005. On June 27, 2005, the Supreme Court granted an interlocutory appeal, which is currently pending, to decide issues related to Reid’s competency in his Davidson County post-conviction

¹² In the analogous situation of a condemned inmate withdrawing a post-conviction petition, procedures have already been established which ensure that cessation of the second tier of the capital appeals process is only permitted if the condemned has made in a knowing, intelligent, voluntary, and competent (under *Rees*) decision to do so. Tennessee Supreme Court Rule 28, Section 11. The right to appeal a post-conviction court’s finding is also specifically protected. *See* Tennessee Supreme Court Rule 28, Section 11(c):

Whenever a trial court determines that the petitioner is competent to withdraw the petition, the order of the trial court finding the petitioner competent and dismissing the petition may be appealed under T.R.A.P. 3. If the trial court has granted a motion for dismissal of post-conviction counsel; post-conviction counsel shall nonetheless have standing to appeal the sole question of whether the petitioner was competent to withdraw the petition. The issue of competency will be reviewed as an issue of fact and the trial court’s finding will be presumed correct, unless the evidence in the record preponderates against it.

case.¹³ With an October 5, 2005 execution date impending and no guidance as to how to proceed to protect their client's legal rights, on September 23, 2005 undersigned counsel filed a post-conviction petition on Mr. Reid's behalf in the Circuit Court for the 19th Judicial District, Montgomery County, Tennessee, Division III, raising concerns about Mr. Reid's incompetency.

2. The Tennessee Supreme Court on May 4, 2006 vacated Orders appointing counsel and staying execution entered by the Montgomery Circuit Court on September 29, 2005 pursuant to the motions and petition filed by counsel. As an issue of first impression, the Supreme Court found that a "next friend" may file a post-conviction petition on behalf of a prisoner who is believed to be presently incompetent.

3. The next friend, Linda Martiniano, filed a timely post-conviction petition (Attachment 2) on behalf of her brother on May 23, 2006.¹⁴ The next friend moved for appointment of counsel and a stay of execution. (Attachment 5) The Montgomery Circuit Court, by Order entered June 13, 2006, dismissed this post-conviction petition, and denied the motions for appointment and stay. In that Order, the court below found that Ms. Martiniano qualifies to serve as a next friend for her brother, Mr. Reid, as she meets the requirements of *Whitmore v. Arkansas*, 495 U.S. 149, 162 (1990) and *Holton v. State* and *Reid v. State*, ___ S.W.3d ___, Tenn. Sup. Ct. No. M2005-01870-SC-S10-PD and No. M2005-02398-SC-S10-PR (filed May 4, 2006 at Nashville) (petition to rehear pending). See Attachment 3, Order of June 13, 2006, p. 5.

¹³ Undersigned counsel are acting herein at the behest of the next friend. Undersigned counsel are the attorneys of record in the Davidson County post-conviction case. In that case, counsel filed on November 29, 2004 a "Motion for an Order Finding Petitioner Incompetent to Proceed and Staying Proceedings until Petitioner Retains Competence and Motion to Recuse the Court from Presiding over Matters Addressing Competency."

¹⁴ The next friend petition was filed within the statute of limitations, a fact not challenged by the State.

4. The State concedes that “Reid has persistent delusions about government controlling his life and the legal process.” *See* Attachment 6 at p. 5, ¶ 5.

5. The court below recognized, in the June 13, 2006 Order, that Dr. Woods, a neuropsychiatrist who has diagnosed Mr. Reid with a severe neurological disorder, has “impressive credentials.” *See* Attachment 3 at p. 15. Further, the Court “does not dispute or attempt to challenge [either] Dr. Woods’ diagnosis....[or his] recitation of the details of Mr. Reid’s ‘scientific technology’ delusions.” *Id.*

6. Dr. Woods had tendered an affidavit regarding Mr. Reid’s current mental state, which is a product of left temporal lobe dysfunction, a neurological disorder “which has produced in Mr. Reid a chronic, schizophrenia-like psychosis which has severely impaired his ability to weigh, deliberate, inform and cooperate.” *See* Woods Affidavit at p. 3, ¶ 8 (Dr. Woods’ affidavit is found in the Petition, Attachment 2, as Attachment 5 to that document.).

7. Dr. Woods has determined that Mr. Reid is presently incompetent under both the standard enunciated in *Rees v. Peyton*, 384 U.S. 312, 314, 86 S.Ct. 1505, 1506, 16 L.Ed.2d 583 (1966) (“whether [the condemned person] has capacity to appreciate his position and make a rational choice with respect to continuing or abandoning further litigation or on the other hand whether he is suffering from a mental disease, disorder or defect which may substantially affect his capacity in the premises” and *State v. Nix*, 40 S.W.3d 459 (Tenn. 2001) (“inability to manage his personal affairs or understand his legal rights and liabilities”). *Id.* at p. 3-5, ¶ 10, 12, 13, 14, 16.

8. The court below by Order entered June 13, 2006 dismissed the post-conviction petition, finding an insufficient prima facie showing of present incompetency

under the competency standard for tolling the statute of limitations enunciated in *State v. Nix*, 40 S.W.3d 459 (Tenn. 2001). The next friend asserts that far more evidence of Reid's present incompetency has been tendered than required to demonstrate a prima facie case under either *Rees* or *Nix* and she wishes to appeal as of right the Court's findings of law and fact and the procedures utilized by the Court.

9. The issues herein are complicated questions of first impression which impact whether Mr. Reid, a concededly brain damaged and mentally ill man, lives or dies and whether his next friend is able to protect his life, as well as his legal rights, through access to the courts. Other similarly situated prisoners and non-death sentenced prisoners are clearly entitled to that which the next friend seeks. In the June 13, 2006 Order, the court below stated as follows:

Initially, the Court notes that these issues lead us into uncharted [sic] territory. Even though our supreme court has addressed the tolling of the one year post-conviction statute of limitations due to incompetency, the precise issues raised in the present case are without precedent. Therefore, the Holton/Reid opinion [*Holton v. State* and *Reid v. State*, ___ S.W.3d ___, Tenn. Sup. Ct. No. M2005-01870-SC-S10-PD and No. M2005-02398-SC-S10-PR (filed May 4, 2006 at Nashville)] provides our only guidance at the present time.

At the time the hearing was conducted a Petition to Rehear in *Holton/Reid* was still pending. This territory is indeed uncharted, as are issues related to the way in which the court below conducted proceedings and applied the law to the facts presented.

10. The court below also noted that the Tennessee Supreme Court in *Holton/Reid* only "apparently" adopted the *Nix* competency standard. Further, the Court recognized that the discussion in that opinion of *Rees* and its progeny "invites some uncertainty." The court below had previously acknowledged that "Mr. Reid's

competency has always been at issue from virtually the date of his arrest....” Therefore, application of the appropriate competency standard herein is critical.

11. The issues herein are further complicated by the lack of any precedent because the next friend has been placed in a situation where the courts of the State of Tennessee keep moving the ball. On May 24, 2005, the Supreme Court affirmed Mr. Reid’s convictions and death sentences in the Montgomery County Circuit Court and set an execution date of October 5, 2005. *State v. Reid*, 164 S.W.3d 286 (Tenn. 2005) (Reid II).

12. On June 27, 2005, the Supreme Court granted interlocutory appeal in *Paul Reid, Jr., v. State of Tennessee*, Case No. M2005-00260-SC-S09-PC, to decide the appropriate procedures and standards for determining competence to proceed in post-conviction. That case arises from the post-conviction litigation in Davidson County Case No. 97-C-1834 (Reid I). The case is still pending before the Tennessee Supreme Court, oral argument having been heard on February 2, 2006.

13. On September 23, 2005, prior to the issuance of the Tennessee Supreme Court’s order resetting the execution to June 28, 2006, and with Mr. Reid’s execution scheduled to occur in two weeks, undersigned counsel filed a Petition for Post-Conviction Relief, Motion for Appointment of Counsel, and Motion for a Stay of Execution in the Montgomery County Circuit Court on behalf of Mr. Reid. The motions and petition alerted the post-conviction court to the pending competency litigation and counsel’s belief that Mr. Reid is presently incompetent and thus unable to rationally communicate with counsel, make decisions regarding pursuing further appeals, and/or

execute legally binding documents on his own behalf.¹⁵ Counsel asserted that the pleadings were filed on behalf of Mr. Reid in order to protect his rights.

14. The Court below granted all motions after a hearing conducted on September 29, 2005. At that hearing, the State recognized the good faith intentions of counsel, their honest belief that Mr. Reid is incompetent, and the quandary (“very difficult impasse”) facing counsel. The State asserted that no one would know what “legally incompetent” meant until that Supreme Court ruled on the Davidson County Rule 9 interlocutory appeal.

15. At the hearing on September 29, 2005, the court below recognized long-standing concerns about Mr. Reid’s incompetency:

The point I am making about reflecting on that [previous trial-level competency proceedings] is that Mr. Reid’s competency has always been at issue from virtually the date of his arrest, so this Court knows that this assertion by Ms. Gleason and Mr. Hare is not some eleventh hour contention, that his competency has been in question for a long time.

(Transcript of September 29, 2005 hearing at p. 22.)

16. The court below accepted the post-conviction petition and entered orders appointing counsel and staying the execution date, which was set for June 28, 2006. The State appealed those Orders, the Tennessee Supreme Court consolidated the case with *Holton v. State* for purposes of oral argument, and vacated all orders in an opinion issued May 4, 2006. *See Holton/Reid, supra*. The Tennessee Supreme Court ruled, as a matter for first impression, that filing by a “next friend” is the proper means of initiating post-conviction litigation where a petitioner is believed to be presently incompetent.

¹⁵ Counsel were permitted by the Davison County post-conviction court to file an unverified amended petition in that case, given counsel’s concerns about Mr. Reid’s competency and the information provided to that court in support of those concerns.

17. A Petition to Rehear *Holton/Reid* was filed on May 15, 2006 requesting that the Court correct factual errors in the opinion and to clarify the competency standard for proceeding on a post-conviction petition filed by a “next friend.” To counsel’s knowledge the Tennessee Supreme Court has yet to rule on the Petition to Rehear.

18. The next friend filed a post-conviction petition on behalf of Mr. Reid on May 23, 2006, along with a motion for a stay of execution and appointment of counsel.

V. RELIEF REQUESTED

WHEREFORE, this Court should enter a stay of execution so that the right to appeal the dismissal of this post-conviction petition by the court below may be vindicated.

Respectfully submitted,

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