

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

---

**JANET KIRKPATRICK, )**  
**Next Friend for Paul D. Reid, )**  
)  
**Petitioner, )**  
**v. ) No. 3:03-0365**  
**) Judge Campbell**  
**RICKY BELL, Warden, )**  
**Riverbend Maximum )**  
**Security Institution, )**  
)  
**Respondent. )**

**RESPONSE IN OPPOSITION TO "MOTION FOR STAY OF EXECUTION AND THE  
APPOINTMENT OF COUNSEL BY NEXT FRIEND  
ON BEHALF OF PAUL REID"**

**INTRODUCTION**

Paul Dennis Reid stands convicted of the first degree murder of seven individuals, committed over the course of two months between February and April of 1997. He has been sentenced to death for all seven murders. Two of those convictions and sentences have been affirmed by the Tennessee Supreme Court, and the execution of those sentences is scheduled for April 29, 2003. Four days ago, April 22, 2003, Reid wrote a letter to the Tennessee Supreme Court, in which he stated:

May I please reiterate my meticulous, yet, adamant conscious choice, not to pursue any post-conviction appeals in the Captain D's case, No. 97-C-1834. Defense attorneys have admonished me that they intend to petition the high courts with frivolous, relentless appeals, even with reprisals that I'm demented. . . .

I have weighed, and rationally contemplated all my legal avenues to strategize a constructive appeal defense, and I elect not furtherance (sic) any post-conviction appeals. . . .

(Attachment 1) As Reid's letter reflects, this request is consistent with the position Reid has taken since at least 2001.

Janet Kirkpatrick, Reid's sister, with the assistance of attorneys from the Office of the Federal Public Defender, now ask this Court to do what Reid has adamantly insisted not be done — stay his execution so that a federal habeas petition may be pursued on his behalf. Next-friend status is sought for Ms. Kirkpatrick, based upon the allegation, as Reid himself anticipated, that Reid is incompetent to waive his appeals. But in light of the statements that Reid himself has repeatedly made, as well as findings that have been made by the state courts regarding Reid's competence, including the Tennessee Supreme Court's recent rejection of a request similar to Ms. Kirkpatrick's, an insufficient showing has been made to justify the conferral of next-friend status

or the grant of a stay of execution.

### **BACKGROUND**

In addition to the correspondence recounted above, Reid has repeatedly requested that he be allowed to forgo his appeals from the seven death sentences that he has received. In February of 2001, Reid sent a letter to the state trial court in which he requested that the court permit him to withdraw his motion for new trial and that he did not wish to attack his convictions and sentences after the conclusion of his direct appeal.<sup>1</sup> In that letter, Reid stated:

I withdraw any and all legal requests for a new trial. Furthermore, once my direct appeal has completed the course in the TN Appeals Court, and the TN Supreme Court, I wave (sic) any and all appeals as well as post conviction appeals. Being of sound mind, I elect by my constitutional rights to bring closure to this nightmare ordeal as well as a miscarriage of justice.

On February 11, 2003, Reid filed a "motion of waiver" and to "dismiss all appeals." Reid included with the motion a letter, in which he recounts that, "[d]uring my three (3) felony-homicide trials, two (2) judges, found me competent, after two (2) separate competency exams," and reasons in support of these determinations. He also reports in the letter that he had been "faking mental illness" in the past in order to "beat" charges in Texas in the early 1980's.<sup>2</sup>

On March 26, 2003, Reid sent a letter to the Tennessee Supreme Court in which he stated: Please be advised, I elect not to pursue any post-conviction appeals, in the Captain D's case No. 97-C-1834.

I have meticulously examined all my post-conviction appeal options; I have precisely contemplated all legal strategies; and I have weighed all the alternatives, for approximately four (4) years, and carefully decided to abandoned(sic) my post-conviction appeals in the Captain D's case No. 97-C-1834.

As "additional reasons" for this election, Reid stated that he had "no confidence, nor belief in the state, or federal, judiciary system, after [his] first trial," and that he had been convicted of "seven (7) egregious homicides." (Attachment 4)

On April 22, 2003, the date on which the Tennessee Supreme Court denied Reid's attorney's motion for a stay of execution, Reid sent another letter to the Tennessee Supreme Court, in which he complained that his attorneys threatened a "character assassination attack . . . to characterize me as demented."<sup>3</sup> Furthermore, in the 92-page letter that was received by the state trial court on April 24, 2003, Reid reiterates his "adamant" refusal to pursue his post-conviction appeals and reveals:

Mr. Jeff DeVasher, and Mr. David Baker informed me, that both attorneys will petition: The Tenn. Supreme Court, and Governor Phil Bredesen; to declare me demented, after I conveyed the following, during our three (3) hour discourse. Mr. DeVasher and Mr. Baker intend to launch a[n] character assassination(sic) attack against me.

(Petitioner's Appendix 10, p. 1) At the conclusion of the letter, Reid reiterates:

After four (4) years of serious, meticulous, consideration, I elect to discontinue any post-conviction appeal in the Captain D's case No. 97-C-1834. I accept the juries(sic) verdict in the Capt. D's case, as well as the punishment imposed, death by lethel(sic) injection.

(*Id.*, p. 92)

**A SUFFICIENT SHOWING HAS NOT BEEN MADE TO WARRANT CONFERRAL OF "NEXT FRIEND" STATUS ON REID'S BEHALF.**

Absent a sufficient showing to warrant the conferral of next-friend status on Ms. Kirkpatrick, this Court lacks jurisdiction to enter a stay of execution. "Federal courts are courts of limited jurisdiction," and "do not have general appellate jurisdiction over the Tennessee courts." *West v. Bell*, 242 F.3d 338, 340 (6th Cir. 2001).

We realize that last minute petitions from parents of death row inmates may often be viewed sympathetically. But federal courts are authorized by the federal habeas statutes to interfere with the course of state proceedings only in specified circumstances. Before granting a stay, therefore, federal courts must make certain that an adequate basis exists for the exercise of federal power.

*Demosthenes v. Baal*, 495 U.S. 731, 737, 110 S.Ct. 2223, 109 L.Ed.2d 762 (1990). Here, Reid himself has chosen not to invoke this Court's jurisdiction, and a "next friend" may not sue in his place automatically. "The burden is on the 'next friend' clearly to establish the propriety of his status and thereby justify the jurisdiction of the court." *Whitmore v. Arkansas*, 495 U.S. 149, 164, 110 S.Ct. 1717, 109 L.Ed.2d 135 (1990)).

"[O]ne necessary condition for 'next friend' standing in federal court is a showing by the proposed 'next friend' that the real party in interest is *unable to litigate his own cause* due to mental incapacity, lack of access to court, or other similar disability," *Whitmore*, 495 U.S. at 165 (emphasis added), and "the burden is . . . on the putative 'next friend' to demonstrate, not simply assert, the incompetence of the prisoner." *West*, 242 F.3d at 640. In order to grant a stay of execution on the basis of a motion by a "next friend," therefore, it must be clearly shown that the prisoner "does not have 'capacity to appreciate his position and make a rational choice with respect to continuing or abandoning further litigation or . . . suffers from a mental disease, disorder, or defect which may substantially affect his capacity in the premises.'" *Id.* (quoting *Rees v. Peyton*, 384 U.S. 312, 314, 86 S.Ct. 1505, 16 L.Ed.2d 583 (1966)).

But the question of Reid's competence is not presented to this Court on a clean slate. On April 21, 2003, Reid's attorney on direct appeal likewise moved for a stay of execution in the Tennessee Supreme Court, alleging that Reid is unable to rationally choose among his options because of mental disease, citing *Rees*, 384 U.S. 312, and presenting evidence in support of this allegation. (Attachment 6).<sup>4</sup> In that motion, Reid's attorney made similar allegations to those presented to this Court, namely, that Reid suffers from brain damage and mental illness; that Reid had expressed views that he has been under constant government/military surveillance since 1985; and that Reid's stated reasons for wishing to abandon further litigation were directly related to the latter beliefs. The psychological report submitted with the motion likewise stated that Reid suffers from a mental disease that consists of delusions and hallucinations and that his delusional beliefs color his understanding of his legal position and options available to him. On April 22, 2003, however, the Tennessee Supreme Court declined to stay Reid's execution. *State v. Reid*, No. M1999-00803-SC-DDT-DD (Tenn. April 22, 2003)(order denying motion for stay of execution) (Attachment 5). The Court noted that Reid has twice been found competent to stand trial, after lengthy hearings, in two of the three capital cases in which he has been

sentenced to death, including the determination made in May of 2000. Finding that Reid "has clearly indicated that he has no desire to pursue any post-conviction remedies," and concluding that the reasons he had advanced for that choice were not irrational, the Court determined that Reid was "a responsible person," who could elect to proceed with further appeals as he chooses. The Court determined that the showing made in support of the motion presented "no new factual assertions that call into doubt Mr. Reid's present capacity to understand his legal position and options or to make a rational choice among these options." *Id.*

While petitioner seeks to contest these determinations, deference is owed by this Court to the Tennessee Supreme Court's decision that Reid is competent to waive his appellate rights. In *Franklin v. Francis*, 144 F.3d 429 (6th Cir. 1998), the Sixth Circuit Court of Appeals vacated a stay of execution where the issuance of the stay was based on the district court's ruling that it was not bound by the state court determination of competency because the state court had not properly followed the competency requirements from *Rees*. *Id.*, 144 F.3d at 432.<sup>5</sup> The Ohio Supreme Court had determined that, while the capital defendant in that case suffered from a mixed personality disorder, it did not prevent him from understanding his legal position and the options available to him, or from making a rational choice between those options." *Id.*, 144 F.3d at 431. Holding that the state court had properly followed the *Rees* test, which contemplates that a prisoner may suffer from a mental disorder, but still be able to rationally choose between his options of pursuing an appeal or waiving further legal rights, the court concluded: Therefore, pursuant to 28 U.S.C. § 2254(d), because the Ohio Supreme Court decision was not contrary to or did not involve an unreasonable application of clearly established federal law, we are bound by the determination of the Ohio Supreme Court that [the condemned inmate] was competent.

*Id.*, 144 F.3d at 433.<sup>6</sup> The same result should attach here. In determining Reid's competency, the Tennessee Supreme Court properly followed the *Rees* standard when it concluded that nothing had been presented to it "to call into doubt Mr. Reid's present capacity to understand his legal position and options or to make a rational choice among these options." Because that determination was neither contrary to, nor involved an unreasonable application of, clearly established federal law, this Court is bound by it. 28 U.S.C. § 2254(d).

Even if this Court were not bound by the Tennessee Supreme Court's determination, in light of the evidence recounted above of Reid's repeated expressions of his own wishes in this matter, the evidence proffered by petitioner does not clearly show that Reid is incompetent to waive further appeals so as to warrant conferral of "next friend" status to Ms. Kirkpatrick. The assertions that Reid suffers from brain damage, mental illness, psychosis and delusions about government surveillance since 1985 are not new but longstanding. *See State v. Reid*, 91 S.W.3d 247, 268-271 (Tenn. 2002). Nevertheless, as the Tennessee Supreme Court noted, he has twice been found competent. Even accepting petitioner's evidence that Reid suffers from mental illness, we think it very probable, given the circumstances that perforce accompany a sentence of death, that in every case where a death-row inmate elects to abandon further legal proceedings, there will be a possibility that the decision is the product of a mental disease, disorder, or defect. Yet, *Rees* clearly contemplates that competent waivers are possible . . .

*Franklin*, 144 F.3d at 433.

Furthermore, as their reports tend to reflect, both Dr. Amador and Dr. Caruso — two of the three doctors upon whom petitioner now relies in support of the motion for stay — have previously

opined in state court that Reid is incompetent, only to have the state courts rule to the contrary.<sup>7</sup> To the extent that petitioner's evidence of incompetence includes a tacit acknowledgment that Reid has previously been found competent — in the form of specific assertions that Reid is "currently incompetent," and suffering from an "acute exacerbation" of his condition<sup>8</sup> — respondent notes only that Reid's current insistence that he be allowed to forgo his appeals dates back at least two years. Reid himself has asserted that he has been contemplating his position for the last four years.

### CONCLUSION

Since, as was held by the Sixth Circuit, an infinite desire to thwart the just process of the law is not the only sign of mental competence, "[w]e must not assume that it is impossible for even a death-sentenced prisoner to recognize the justice of his sentence and to acquiesce in it." *West*, 242 F.3d at 343. The Tennessee Supreme Court has determined that Reid is competent to waive further appeals of his death sentences. There is no legal basis upon which this Court may rule otherwise and stay Reid's execution — a remedy that he has steadfastly refused to seek for himself. Until and unless Reid himself chooses otherwise, "[t]he State is entitled to proceed without federal intervention." *Demosthenes*, 495 U.S. at 737. The motion for stay and for appointment of counsel by the prospective next friend should be denied.

Respectfully submitted,  
PAUL G. SUMMERS  
Attorney General & Reporter

---

AMY L. TARKINGTON  
Deputy Attorney General  
425 Fifth Avenue North  
Nashville, Tennessee 37243  
(615) 741-2216

---

JOSEPH F. WHALEN  
Assistant Attorney General  
425 Fifth Avenue North  
Nashville, Tennessee 37243  
(615) 532-7357

## **CERTIFICATE OF SERVICE**

I hereby certify that a true and exact copy of the foregoing was served by first class mail, postage prepaid, and my facsimile, to Henry Martin, Office of the Federal Public Defender, 810 Broadway, Suite 200, Nashville, Tennessee, 37203, on this, the 26th day of April, 2003.

---

JOSEPH F. WHALEN  
Assistant Attorney General

<sup>1</sup> *See State v. Reid*, Nos. 97-C-1836, 1834 (Davidson Co. Crim. Ct. Feb. 27, 2001) (order declining defendant's requests to abandon appeals). (Attachment 2)

<sup>2</sup> See *State v. Reid*, Nos. 97-C-1834, 1836 (Davidson Co. Crim. Ct. Feb. 20, 2003) (order denying motion to dismiss appeals). (Attachment 3)

<sup>3</sup> See *State v. Reid*, No. M1999-00803-SC-DDT-DD, slip op. , p. 3, n. 3 (Tenn. April 22, 2003). (Attachment 5)

<sup>4</sup> On April 10, 2003, Reid's attorney filed a petition for a writ of certiorari in the United States Supreme Court along with a motion requesting that the Court recognize in forma pauperis status for Reid, despite the fact that Reid had declined to sign the supporting affidavit. In support of that motion, Reid's attorneys alleged that questions existed concerning Reid's competency. The Court denied that motion on April 21, 2003. *Reid v. Tennessee*, \_\_\_ S.Ct. \_\_\_, 2003 WL 1903776 (No. 02M88)(April 21, 2003).

<sup>5</sup> Compare *Demosthenes v. Baal*, 495 U.S. 731, 110 S.Ct. 2223, 109 L.Ed.2d 762 (1990) (per curiam), in which the Court vacated a stay of execution entered on a "next friend" motion and held that a state court conclusion regarding competency was entitled to a presumption of correctness. Under 28 U.S.C. § 2254(e)(1), such a presumption may only be rebutted upon clear and convincing evidence.

<sup>6</sup> See also *Franklin v. Francis*, 168 F.3d 261, 262 (6th Cir. 1999) (district court properly determined that the only issue it had jurisdiction to consider was whether the state court used the correct legal standard to determine the prisoner's competence; any new evidence thereon was appropriate for consideration only by the state courts).

<sup>7</sup> Dr. Amador testified at Reid's competency hearing in *State v. Reid*, No. 38887 (Montgomery Co. Circ. Ct.); Dr. Caruso testified in Reid's competency hearing in *State v. Reid*, No. 97-C-1836 (Davidson Co. Crim. Ct.).

<sup>8</sup> Report of Keith A. Caruso, p. 8; Declaration of Xavier Amador, p. 4