

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

STATE OF TENNESSEE,]	No.
Appellee,]	M1999-00803-SC-DDT-DD –
vs.]	Davidson County Criminal
PAUL DENNIS REID, JR.,]	(CAPITAL CASE)
Appellant]	Filed – April 21, 2003

MOTION FOR STAY OF EXECUTION

Comes appointed counsel for the appellant, Paul Dennis Reid, Jr., and hereby moves this Honorable Court for an order granting a stay of execution in the above-styled case. This Court has set an execution date of April 29, 2003. As grounds for said motion, counsel for the appellant would show as follows:

1. The appellant was convicted of two (2) counts of first degree murder and one (1) count of especially aggravated robbery in the above-styled case on April 14, 1999, in the Criminal Court for Davidson County, Tennessee. On April 20, 1999, the jury imposed two (2) sentences of death on the appellant's first degree murder convictions.

2. The Tennessee Court of Criminal Appeals affirmed the appellant's convictions and sentences in an opinion issued on May 31, 2001. See State v.

Paul Dennis Reid, Jr., No. M1999-00803-CCA-R3-DD (Tenn. Crim. App. at Nashville, May 31, 2001). This Court, on automatic review pursuant to T.C.A. §39-13-206(a)(1) (1997), issued an opinion on November 26, 2002 affirming the appellant's convictions and sentences, and setting an execution date for April 29, 2003, unless otherwise ordered by this Court or other proper authority. See State v. Reid, 91 S.W.3d 247 (Tenn. 2002). On December 19, 2002, this Court denied the appellant's Petition for Rehearing. Id. On April 10, 2003, counsel for the appellant filed a Petition for Writ of Certiorari in the United States Supreme Court, along with a Motion for Order Recognizing *In Forma Pauperis* Status Without the Filing of an Affidavit of Indigency. On April 21, 2003, the United States Supreme Court denied the Motion for Order Recognizing *In Forma Pauperis* Status Without the Filing of an Affidavit of Indigency.

3. Under T.C.A. §40-30-202(a) (1997), every person in custody under a sentence of a court of this state has one (1) year from the date of the final action by this Court to file a Petition for Post-Conviction Relief. The appellant's right to file a Petition for Post-Conviction relief in this case would therefore expire one (1) year from December 19, 2002, the date on which this Court denied his Petition for Rehearing. Without a stay of execution, the appellant's right to file a Petition for Post-Conviction Relief within one (1) year from the date of the final action by this Court would be pre-empted, and the appellant would either be forced to file a Petition for Post-Conviction Relief before his execution date, or lose his right to file said Petition. Counsel is aware that the appellant, in a handwritten letter to

this Court dated March 24, 2003, has indicated that he does not intend to pursue state post-conviction remedies. Without a stay of execution, however, the appellant will not have the same amount of time to finally make this decision, or to reconsider his stated position, as would any other person in custody under a sentence of a court of this state. Counsel for the appellant therefore asks this Court to issue an order staying the appellant's execution pending resolution of a timely filed Petition for Post-Conviction Relief.

4. In the alternative, counsel asks this Court to stay the appellant's execution and remand this case to the trial court for an evidentiary hearing to determine whether the appellant has the capacity to appreciate his position and make a rational choice with respect to continuing or abandoning further litigation. See Rees v. Peyton, 384 U.S. 312, 314, 86 S.Ct. 1505, 1506, 16 L.Ed.2d 583 (1966). Evidence was presented at the penalty phase of the trial in this capital case, and in two subsequent cases where the appellant also received death sentences,¹ that the appellant has brain damage and mental illness. The appellant has expressed views that he has been under constant government/military surveillance since 1985, that the government/military has used "scientific technology" on his brain since 1985, and that every person who has had contact with the appellant since 1985 has been under the control of the government/military. The appellant's stated reasons for wishing to abandon

¹ In State v. Paul Dennis Reid, Jr., Montgomery County Circuit Court, Division Three, No. 38887, Tennessee Court of Criminal Appeals No. M2001-02753-CCA-R3-CD, the appellant was convicted, inter alia, of two (2) counts of first degree murder and sentenced to death on each count. In State v. Paul Dennis Reid, Jr., Davidson County Criminal Court, Division Three, No. 97-C-1836, Tennessee Court of Criminal Appeals No. M2003-00539-CCA-R3-DD, the appellant was convicted, inter alia, of three (3) counts of first degree murder and was sentenced to death on each count.

further litigation in this case are directly related to these beliefs. Dr. Pamela Auble, a clinical neuropsychologist who testified at the sentencing phase of the trial in this case, has reviewed recent letters written by the appellant to counsel wherein the appellant expresses his reasons for wishing to abandon further litigation. Dr. Auble has advised counsel that in her opinion, the appellant is unable to rationally choose among his options because of his mental disease. See attached letter from Dr. Auble to counsel. Counsel has recently met with the appellant to discuss the appellant's reasons for wishing to abandon further litigation, and concurs in Dr. Auble's findings.

Should this Court remand this case for an evidentiary hearing to determine whether the appellant has the capacity to make a rational choice with respect to continuing or abandoning further litigation, counsel anticipates that issues will arise prior to and during said hearing that involve whether the appellant has received the effective assistance of counsel at trial and on direct appeal, and whether the appellant would choose to file a petition for post-conviction relief on that basis. For that reason, counsel requests that this Court order, or direct the trial court to order, the appointment of counsel to discuss with the appellant post-convictions issues related to whether he has received the effective assistance of counsel at trial and on direct appeal, and whether the appellant has the capacity to make a rational choice with respect to pursuing or abandoning these issues.

5. Defense counsel has contacted Deputy Attorney General Amy Tarkington, who has advised that the State opposes this motion.

WHEREFORE, the counsel for the appellant asks this Court to issue an order staying his execution pending resolution of a timely filed Petition for Post-Conviction Relief. Alternatively, counsel for the appellant asks this Court to issue an order staying his execution and remanding this case to the trial court for an evidentiary hearing to determine whether the appellant has the capacity to appreciate his position and make a rational choice with respect to continuing or abandoning further litigation. Should this Court order such hearing, counsel requests that this Court appoint, or direct the trial court to appoint, counsel to assist the appellant in considering possible post-conviction relief issues relating to whether the appellant has received the effective assistance of counsel at trial and on direct appeal, and whether the appellant has the capacity to make a rational choice with respect to pursuing or abandoning these issues. In the alternative, counsel requests that this Court order any such other relief as this Court deems just.

Respectfully submitted,

Jeffrey A. DeVasher
Assistant Public Defender
B.P.R. #11264

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing motion has been delivered to the office of Joseph F. Whalen and Amy Tarkington, Assistant Attorney Generals, 425 Fifth Avenue North, Nashville, Tennessee, 37202, by placing same in the United States Mail, on this the ____ day of April, 2003.

Jeffrey A. DeVasher

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STATE OF TENNESSEE]

COUNTY OF DAVIDSON]

AFFIDAVIT

I, Jeffrey A. DeVasher, being duly sworn, do hereby swear and affirm that the facts stated in the accompanying motion are true and correct to the best of my knowledge and belief.

Jeffrey A. DeVasher

Sworn to and subscribed before me this the ____ day of April, 2003.

Notary Public

My commission expires _____

