

IN THE SUPREME COURT OF TENNESSEE

AT JACKSON

PHILIP R. WORKMAN,)	
)	
Respondent,)	
)	
V.)	NO. M1999-01334-SC-DPE-PD
)	
STATE OF TENNESSEE,)	
)	
Movant.)	

SEPARATE ORDER CONCURRING IN PART AND DISSENTING IN PART

On March 20, 1982, a jury convicted Philip R. Workman of first degree murder and thereafter imposed a sentence of death. Since then, the conviction and sentence have together been reviewed to the fullest extent allowable under state and federal procedural guidelines. Even in the face of this withering scrutiny, however, the conviction and sentence continue in force as then imposed.

Given the state of the record, there exists, in my view, no procedure, no method, no means by which the conviction or the sentence or the process through which they were produced can be further tested or scrutinized under the procedural guidelines within which this Court must function. Therefore, the conviction and sentence are, in my opinion, final as a matter of law.

In most civilized societies, the power to commute a death sentence is within the prerogative of the executive. This power is usually derived from the principal governing document of the society. In Tennessee, this authority is vested in the

Governor by our Constitution:

He shall have power to grant
reprieves and pardons, after
conviction, except in cases of
impeachment.

Tenn. Const. art. III, ' 6.

To complement the Governor's constitutional power to commute a sentence of death, our General Assembly has, in its wisdom, seen fit to provide, by statute, the means by which the Supreme Court may certify to the Governor that, in the opinion of the Court, there were extenuating circumstances attending the case and the punishment ought to be commuted. This enabling statute, Tenn. Code Ann. ' 40-27-106, provides as follows:

The governor may, likewise, commute the punishment from death to imprisonment for life, upon the certificate of the supreme court, entered on the minutes of the court, that in its opinion, there were extenuating circumstances attending the case, and that the punishment ought to be commuted.

Tenn. Code Ann. ' 40-27-106 (1997).

By no means does this statute restrict, expand, or in any way affect, in the legal sense, the authority of the Governor to exercise his constitutional power of commutation. It serves, simply, as a vehicle through which the Court may ethically and on the record communicate with the Governor in aid of his exclusive exercise of the power to commute sentences.

In this regard, the Supreme Court has offered its communication to the Governor on many occasions. See Collins v.

State, 550 S.W.2d 643 (Tenn. 1977); Bowen v. State, 488 S.W.2d 373 (Tenn. 1972); Bass v. State, 191 Tenn. 259, 231 S.W.2d 707 (1950); Temples v. State, 183 Tenn. 531, 194 S.W.2d 332 (1946); Porter v. State, 177 Tenn. 515, 151 S.W.2d 171 (1941); Woodruff v. State, 164 Tenn. 530, 51 S.W.2d 843 (1932); Freddo v. State, 127 Tenn. 376 (1913); Green v. State, 88 Tenn. 634 (1890); Clark v. State, 67 Tenn. 591 (1876); Greer v. State, 62 Tenn. 321 (1874); State v. Becton, 66 Tenn. 138 (1874). In some cases, the Court recommended commutation; in others, commutation was expressly discouraged.

Because the Court is not of one mind on the commutation issue, I am firmly convinced that it is my duty to separately address Workman's request for a recommendation of commutation and to do so on the record.

Now, therefore, in accordance with that duty described above, pursuant to and independent of the enabling statute cited herein, and after a careful consideration of the pertinent parts of the entire record, I do hereby certify to His Excellency, the Honorable Don Sundquist, Governor of the State of Tennessee, that there were extenuating circumstances attending this case and that the punishment of death ought to be commuted.

ADOLPHO A. BIRCH, JR., Justice