

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

STATE OF TENNESSEE,)
)
 vs.) No. M1999-01334-SC-DPE-PD
)
 PHILIP WORKMAN,)

Filed by Clerk's Office January 22, 2002 (jsr)

**RESPONSE TO MOTION OF THE STATE OF TENNESSEE
TO DISSOLVE STAY AND RESET EXECUTION DATE**

This case raises "serious questions" about whether Philip Workman is innocent of capital murder and therefore ineligible for execution. Workman v. State, 41 S.W.3d 100, 103 (Tenn. 2001). The State seeks to pretermitt Mr. Workman's right to have those questions fully reviewed. Because doing so would violate State statutory and constitutional law, the federal constitution, and moral decency, this Court should deny the State's motion to set an execution date.

I. MR. WORKMAN HAS TWO STATUTORY RIGHTS OF APPEAL

1. T.C.A. § 40-26-105 Provides That Mr. Workman Can Appeal
- 2.

Section 40-26-105, T.C.A., explicitly provides that Mr. Workman has a right to appeal the Shelby County Criminal Court's decision denying his error coram nobis petition. Through the appellate process, Mr. Workman has already shown that the trial court made repeated errors during the coram nobis proceeding. See Workman v. State, 5/2/01 Order/Opinion of the Tennessee Court of Criminal Appeals (trial court without jurisdiction to enter orders summarily setting hearing and ordering Mr. Workman to produce witness statements; trial court's order to produce witness statements substantively wrong in and of itself); Workman v. State, 6/21/01 Order/Opinion of the Tennessee Court of Criminal Appeals (trial court erred in entering "gag

order”). Consequently, there exists no reason to blindly presume that the trial court’s final ruling is correct. Indeed, the presumption is just the opposite, and Mr. Workman intends to present on appeal issues that entitle him to relief. Ordering Mr. Workman’s summary execution to deprive him of his statutory right to review would therefore violate T.C.A. § 40-26-105.

B Mr. Workman Has A Right Of Direct Appeal

Tennessee courts consider an error coram nobis proceeding the functional equivalent of a motion for a new trial based on newly discovered evidence, the only difference being that the period in which one can bring a coram nobis proceeding is longer than the period in which one must file a new trial motion. State v. Hart, 911 S.W.2d 371, 374 (Tenn.Crim.App. 1995); Teague v. State, 772 S.W.2d 915, 920 (Tenn.Crim.App. 1988). Thus, Mr. Workman’s error coram nobis proceeding was an extension of the original criminal trial. Mr. Workman therefore has a State law right to appeal the trial court’s action which was the functional equivalent of denying a motion for new trial. See Tenn.R.Crim.P. 37; Tenn.R.Crim.P. 33; Tenn.R.App.P. 3(e); see also T.C.A. § 39-2-205 (a) (repealed)(guaranteeing appeal when the death penalty has resulted from trial court proceedings).

II. DEPRIVING MR. WORKMAN OF HIS RIGHTS OF APPEAL WOULD VIOLATE THE STATE AND FEDERAL CONSTITUTIONS

Due process norms protect interests which are created by “existing rules or understandings that stem from an independent source such as state law.” Cleveland Board of Education v. Loudermill, 470 U.S. 539, 538, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985)(quoting Board of Regents v. Roth, 408 U.S. 564, 576-78, 92 S.Ct. 2701, 33 L.Ed.2d 548 91972)). State statutes and rules are such independent sources. Id. Thus, while the State was not required to

provide appellate review of coram nobis proceedings or a direct appeal, by doing so it created for Mr. Workman rights which Article I, §§ 8 and 16 of the Tennessee Constitution and the Eighth and Fourteenth Amendments to the United States Constitution protect. See State v. Gillespie, 898 S.W.2d 738, 741 (Tenn.Crim.App. 1994)(“where appellate review is provided by statute, the proceedings must comply with constitutional standards”).

Recognizing that due process norms apply, the question arises “what process is due?” The answer to this question involves considering “both the governmental interests involved and the private interests affected by the official action.” Burford v. State, 845 S.W.2d 204, 207 (Tenn. 1992); Cleveland Board of Education v. Loudermill, 470 U.S. at 542-43. As to Mr. Workman’s interest, he will present on appeal “serious issues” which, if resolved in his favor, will spare him from execution. Mr. Workman has already demonstrated that the trial court erroneously resolved issues against him during the trial court proceedings. As this Court recognized less than a year ago, given the gravity of Mr. Workman’s interest, it “far outweighs any governmental interest in preventing the litigation of stale claims.” Workman, 41 S.W.2d at 103. Thus, if the State summarily executed Mr. Workman, its arbitrary denial of his right to seek appellate review would violate Article I, §§ 8 and 16 of the Tennessee Constitution and the Eighth and Fourteenth Amendments to the United States Constitution.

III BECAUSE MR. WORKMAN'S LIFE IS IN THE BALANCE, IF ANYTHING THIS COURT SHOULD AFFORD HIM ADDITIONAL PROCESS, NOT LESS

Error coram nobis petitioners who are not sentenced to death have the ability to litigate their claims in the normal course of business. They can review the record, prepare their briefs,

and argue their cases without an arbitrary deadline that rushes them through the process with the attendant possibility of error. Because Mr. Workman's appeal involves determining whether he lives or dies, there should be no rush to judgment under which similarly situated petitioners do not labor.

IV CONCLUSION

The State seeks Mr. Workman's summary execution to avoid appellate review of a proceeding in which Mr. Workman has already shown mistakes were made. To avoid violations of state statutory law, the Tennessee Constitution, and the United States Constitution, this Court must deny the State's motion to set an execution date.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that I have served a copy of the foregoing by U.S. Mail to Joe Whalen, Assistant Attorney General, John Sevier Building - Second Floor, 500 Charlotte Avenue, Nashville, Tennessee 37243, this _____ day of January, 2002.
