

IN THE SUPREME COURT OF TENNESSEE  
AT JACKSON

PHILIP RAY WORKMAN,                    )  
                  Petitioner,                    )  
v.    )  
  )  
STATE OF TENNESSEE,                    )  
                  Respondent.                    )

No. 02-C-01-9210-CR-00232

REPLY TO RESPONSE TO MOTION  
TO SET DATE FOR EXECUTION

The defendant, Philip Ray Workman (“Workman”), asserts that the State’s Motion to Set Date for Execution is premature because certiorari proceedings in the United States Supreme Court have not concluded. While Supreme Court Rule 44.2 provides that any petition for rehearing of an order denying certiorari shall be filed within 25 days after the date of the order, Supreme Court Rule 16.3 specifically provides that the order of denial will not be suspended pending disposition of a petition for rehearing, except by order of the Court or of a Justice of that Court. In addition, Workman does not aver that he has filed, will file, or has sufficient grounds to file such a petition for rehearing. Under Supreme Court Rule 44.2, such a petition for rehearing of a denial of certiorari is restricted to intervening circumstances of a substantial or controlling effect, or to other substantial grounds not previously presented, and must be presented in good faith and not for delay. Accordingly, with entry of the order denying certiorari, proceedings should be regarded as concluded.

Workman also asserts that he has yet to seek clemency. A request to stay execution of a lawful order of this Court based on a desire to seek clemency is not appropriately addressed to the judicial branch but is rather a matter committed to the discretion of the Governor. Article III, §6 of the Tennessee Constitution and Tenn. Code Ann. §40-27-101 grant the Governor the authority to issue a reprieve of the execution. If the Executive Branch needs additional time to consider a clemency request, a reprieve of the execution from the Governor is the appropriate remedy.

Finally, Workman claims his attorneys were told on October 4, 1999, that new policies regarding clemency were being drafted and were unavailable. But the attached affidavit by the Governor's legal counsel establishes that they were faxed to Rev. Ingle and Mr. Minton at the Reverend's request on October 4, 1999.

For the reasons advanced, the State respectfully requests that its previously filed motion be granted, and that this Court set a prompt date of execution for Phillip Ray Workman.

Respectfully submitted,

PAUL G. SUMMERS  
Attorney General & Reporter

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KATHY MORANTE, BPR No. 9616  
Deputy Attorney General

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JOSEPH F. WHALEN, BPR No.19919  
Assistant Attorney General  
425 Fifth Avenue North  
Nashville, TN 37243  
615-532-7361

**CERTIFICATE OF SERVICE**

I hereby certify that a true and exact copy of the foregoing was served on the petitioner by facsimile and by mail, first-class, postage prepaid, to his counsel: Christopher M. Minton, Esq., 460 James Robertson Parkway, Second Floor, Nashville, Tennessee, 37243, and Saul Belz, Waring Cox, 1300 Morgan Keegan Tower, 50 North Front Street, Memphis, Tennessee, 38103, on this the \_\_\_\_ day of October, 1999.

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JOSEPH F. WHALEN  
Assistant Attorney General