

**IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE**

STATE OF TENNESSEE,

v.

SEDLEY ALLEY.

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No. M1991-00019-SC-DPE-PD

MOTION TO RESET DATE OF EXECUTION - Filed December 14, 2004

On January 16, 2004, all state court proceedings in this matter having concluded, this Court ordered that Sedley Alley’s 1987 death sentence be executed on June 3, 2004. On May 19, 2004, the United States District Court for the Western District of Tennessee issued an order staying the execution of the defendant Alley’s sentence. The State filed a motion to vacate the district court’s stay order in the United States Court of Appeals for the Sixth Circuit. In an order issued May 26, 2004, the Sixth Circuit declined to vacate the stay of execution and set the matter for expedited briefing and argument. On December 14, 2004, the Sixth Circuit vacated the stay, ruling that the district court lacked jurisdiction to enter it. *Sedley Alley v. Ricky Bell*, ___ F.3d ___, No. 04-5596 (6th Cir. Dec. 14, 2004) (copy attached).

When the execution date set by this Court has passed by reason of a stay, a new date of execution shall be set “when the stay . . . is lifted or dissolved.” Tenn.Sup.Ct.R. 12.4(E). The stay issued by the federal district court on May 19, 2004, having now been vacated, the State respectfully moves that a new date of execution be set forthwith. Though such a date can be no less than seven (7) days from this Court’s order, *see id.*, the State respectfully submits that it should be no *more* than

twenty-one (21) days. Experience shows that setting the date any farther into the future will serve only to invite and encourage the initiation of additional litigation, and the litigation in this case has already spanned some seventeen years since the defendant's conviction and sentence. The federal court's stay of execution having now been vacated, the State is able, and should proceed expeditiously, to "execute its moral judgment in [this] case" and thus allow "the victims of crime [to] move forward knowing the moral judgment will be carried out." *Calderon v. Thompson*, 523 U.S. 538, 556 (1998).

Respectfully submitted,

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**DESIGNATION OF ATTORNEY OF RECORD
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The State's attorney of record prefers to be notified via facsimile at 615-532-7791.

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been delivered by first class mail, postage prepaid, and by facsimile, to Paul Bottei, at 810 Broadway, Suite 200, Nashville, Tennessee, 37203, on this the _____ day of December, 2004.

JOSEPH F. WHALEN
Associate Solicitor General