

**IN THE SUPREME COURT OF TENNESSEE**

**AT NASHVILLE**

<b>SEDLEY ALLEY,</b>	)	
	)	
<b>Appellant,</b>	)	
	)	<b>SHELBY CRIMINAL</b>
<b>v.</b>	)	<b>S.Ct. No.</b>
	)	<b>M1991-00019-SC-DPE-DD</b>
<b>STATE OF TENNESSEE,</b>	)	<b>Filed May 21, 2004</b>
	)	
<b>Appellee.</b>	)	

**RESPONSE OF THE STATE OF TENNESSEE  
IN OPPOSITION TO APPELLANT'S  
MOTION FOR A STAY OF EXECUTION**

By order of this Court, entered January 16, 2004, Sedley Alley's execution date is set for June 3, 2004. Alley, who relied on an insanity defense at trial and throughout the standard three-tier appellate review process, now asks this Court to stay his execution in order to allow DNA testing to demonstrate his actual innocence of the murder of Suzanne Collins. For the reasons set forth below, this Court should deny Alley's motion for stay and allow the execution of Alley's lawfully-imposed death sentence.<sup>1</sup>

On May 4, 2004, Alley filed a post-conviction petition seeking DNA testing pursuant to Tenn. Code Ann. §40-30-301, *et seq.* Following a hearing, the trial court denied Alley's petition on May 17, 2004. Alley filed an immediate notice of appeal along with several other pleadings seeking extraordinary relief beyond the Tenn. R. App. P. 3 process. In recognition of the pending execution

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<sup>1</sup>On May 19, 2004, the United States District Court for the Western District of Tennessee entered an Order staying Alley's execution pending the decision of the Sixth Circuit Court of Appeals in *Abdur' Rahman v. Bell*, Nos. 02-6547/6548. The State is currently seeking an order from the Sixth Circuit vacating that stay.

date, on May 18, 2004, the Court of Criminal Appeals denied Alley's various motions seeking extraordinary relief beyond the Rule 3 appeal but granted expedited review of the trial court's denial of DNA testing. (Copy of Order attached). Following receipt of the State's response at noon today, the appeal was submitted for immediate review. Since the intermediate appellate court is proceeding on an expedited basis, a motion for stay at this point is premature. Alley may well obtain plenary appellate review of his claim prior to his execution date.

In any event, in order to obtain a stay of execution, Alley must demonstrate a likelihood of success on the merits of his appeal from the dismissal of his post-conviction petition seeking DNA testing. *See In re Sapp*, 116 F.3d 460, 464 (6th Cir. 1997); *Delo v. Blair*, 509 U.S. 823 (1993)(*per curiam*)(stay of execution requires showing of substantial grounds upon which relief might be granted). *Compare Nashville, C. and St. L. Ry. Railroad and Public Utilities Commission*, 32 S.W.2d 1043, 1045 (Tenn. 1930)(injunction to maintain status quo will not issue unless party establishes that it will probably prevail on the merits). Alley has failed even to make an allegation of likely success on the merits. Rather, he asks this Court to grant the stay as alternate relief should this Court deny his "Request for immediate production of biological evidence" (State's Response to this motion to be filed separately). His request is patently insufficient. Not only is Alley's motion for a stay legally insufficient, it also fails to set forth any reasons for invocation of this Court's equitable jurisdiction.

Alley's stay motion yet again puts this Court in the position of responding to an eleventh-hour barrage of pleadings from a prisoner whose execution is imminent. Despite his confession in 1985 and no claim of innocence for nearly 20 years, Alley filed this post-conviction petition a little more than 30 days before his scheduled execution, claiming innocence for the first time. He

impliedly acknowledges that a petition under the Post-Conviction DNA Analysis Act could have been filed as early as 2002. (Emergency Motion for Production of Biological Samples for DNA Analysis at 3).

By seeking a stay of the order setting his execution, Alley seeks equitable relief. But equity must take into consideration both the State's strong interest in proceeding with its judgment nearly 20 years after verdict and the lateness of Alley's filing. *See Gomez v. United States*, 503 U.S. 653, 654 (1992) ("There is no good reason for this abusive delay, which has been compounded by last minute attempts to manipulate the judicial process. A court may consider the last minute nature of an application to stay execution in deciding whether to grant equitable relief"); *Sawyer v. Whitley*, 505 U.S. 333, 341 n.7 (1992) (court may resolve against last-minute petitioner any doubts and uncertainties as to the sufficiency of his submission). In view of the eleventh-hour nature of Alley's filings, this Court should resolve the balance of the equities on the motion for stay against Alley and in favor of the State.

Alley's motion for a stay of execution should be denied.

Respectfully submitted,

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Attorney General and Reporter

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and exact copy of the foregoing has been sent via fax and by first-class mail, postage prepaid, to Donald E. Dawson, Post-Conviction Defender, 530 Church Street, Suite 600, Nashville, TN 37243, on this the \_\_\_\_ day of May, 2004.

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JENNIFER L. SMITH  
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**AMENDED DESIGNATION OF ATTORNEY OF RECORD FOR STATE**

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