

IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE

**STATE OF TENNESSEE V. STEVE HENLEY**

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**No. M1987-00116-SC-DPE-DD - Filed: October 20, 2008**

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**ORDER**

On September 11, 2008, the State filed a Motion to Set Execution Date for Steve Henley. The motion stated that Henley had completed the standard three-tier appeals process and that an execution date should therefore be set under Tennessee Supreme Court Rule 12.4(A).

On October 6, 2008, Steve Henley filed a Response to Motion to Set Execution Date. The Response contended that a division among the judges reviewing the effectiveness of counsel on post-conviction warranted this Court's exercise of its inherent constitutional and statutory powers to vacate the sentence of death and either modify the sentence to life imprisonment or grant a new sentencing hearing. The Response also requested that the Court issue a certificate of commutation under Tenn. Code Ann. § 40-27-106 . Finally, the response asked that the Court either deny the motion or hold the motion in abeyance pending the decisions in two federal cases, Harbison v. Bell, 503 Fed. 3d 566, cert. granted, 554 U.S. \_\_\_, 128 S.Ct. 2959 (June 23, 2008)(No. 07-8521), which will decide whether counsel appointed by a federal court may represent a death-row inmate in state clemency proceedings, and Harbison v. Little, 6<sup>th</sup> Cir. No. 07-6225, which will address whether Tennessee's lethal injection protocol is constitutional.

Having considered the Motion to Set Execution Date and the Response, the Court finds that Henley has presented no legal basis for denying the State's Motion to Set Execution Date. Therefore the State's motion is GRANTED. Steve Henley's request for issuance of a certificate of commutation is DENIED. It is hereby ORDERED, ADJUDGED and DECREED by this Court that the Warden of the Riverbend Maximum Security Institution, or his designee shall execute the sentence of death as provided by law on the fourth day of February, 2009, unless otherwise ordered by this Court or other appropriate authority.

Counsel for Steve Henley shall provide a copy of any order staying execution of this order to the Office of the Clerk of the Appellate Court in Nashville. The Clerk shall expeditiously furnish a copy of any order of stay to the Warden of the Riverbend Maximum Security Institution.

IT IS SO ORDERED.

PER CURIAM