

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

STATE OF TENNESSEE V. PERVIS T. PAYNE

No. M1988-00096-SC-DPE-DD - Filed: October 22, 2007

ORDER

On May 22, 2007, this Court re-set the date for the execution of Pervis T. Payne to December 12, 2007. On September 27, 2007, Mr. Payne filed a Motion to Vacate Execution Date. He argues that this Court should vacate the execution date in light of the following intervening developments: (1) his pending challenge in the United States District Court for the Middle District of Tennessee to the constitutionality of Tennessee's current three-drug lethal injection protocol, see Payne v. Bredeesen, No. 3:07-0714 (M.D. Tenn., filed July 9, 2007); (2) the United States District Court's recent decision finding unconstitutional the same protocol as it is currently being carried out, see Harbison v. Little, No. 3:06-1206, 2007 WL 2821230 (M.D. Tenn. Sept. 19, 2007); this Court's subsequent order vacating, at the State's request, Edward Jerome Harbison's execution date of September 26, 2007, and re-setting the execution for January 9, 2008, see State v. Harbison, No. M1986-00093-SC-OT-DD (Tenn. Sept. 25, 2007); and (3) the United States Supreme Court's recent grant of a petition for writ of certiorari in a case challenging the constitutionality of Kentucky's lethal injection protocol that is similar to Tennessee's, see Baze v. Rees, No. 07-5439, 2007 WL 2075334 (U.S. Sept. 25, 2007). On October 4, 2007, Mr. Payne filed a Supplement to Motion to Vacate Execution Date noting that the United States Supreme Court recently granted a stay of execution in a Texas case raising this same issue. See Turner v. Texas, No. 07A272, 2007 WL 2803693 (U.S. Sept. 27, 2007). On October 5, 2007, the State filed a Response to Motion to Vacate Execution Date arguing that the motion is premature and without merit. On October 17, 2007, Payne filed a Second Supplement in Support of Motion to Vacate Execution Date referencing recent developments in other state courts.

We note that this Court has upheld the prior three-drug lethal injection protocol under both the state and federal constitutions. See Abdur'Rahman v. Bredeesen, 181 S.W.3d 292 (Tenn. 2005), cert. denied, 126 S.Ct. 2288 (2006). When the Tennessee Department of Correction subsequently refined the protocol, it retained the three-drug combination.¹ The issue of the constitutionality of lethal injection has been litigated in state and federal courts for some time. The United States Supreme Court has not invalidated the three-drug combination used by Tennessee and numerous other jurisdictions. See Workman v. Bredeesen, 486 F.3d 896, 899 (6th Cir. 2007), cert. denied, 127 S.Ct. 2160 (2007). Although decisions of United States District Courts and United States Courts of

¹Tenn. Dep't of Corr., Report on Administration of Death Sentence in Tennessee (Apr. 30, 2007), available at Workman v. Bredeesen, 486 F.3d 896, 913-921 (6th Cir. 2007) (Appendix A).

Appeal may provide guidance when interpreting the Constitution of the United States, this Court is bound only by decisions of the United States Supreme Court. State v. Carruthers, 35 S.W.3d 516, 561 n.45 (Tenn. 2000); Strouth v. State, 999 S.W.2d 759, 765 n.9 (Tenn. 1999); State v. McKay, 680 S.W.2d 447, 450 (Tenn. 1984).

Mr. Payne asks this Court to vacate his execution date to await the final resolution of Baze and Harbison by the federal courts. In effect, he is requesting this Court to grant him a stay of execution pending disposition of federal litigation. We decline to do so. As we previously have stated, a “request for stay of execution in order to litigate claims in a federal court is more appropriately addressed to that court.” Coe v. State, 17 S.W.3d 251 (Tenn. 2000).

Upon due consideration, the Motion to Vacate Execution Date is DENIED.

It is so ORDERED.

PER CURIAM