

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

IN RE: DARYL KEITH HOLTON)
)
) BEDFORD COUNTY
) ORIGINAL APPEAL NO.
) M2000-00735-SC-DDT-DD

MOTION TO RE-SET EXECUTION DATE

The State of Tennessee requests the setting of a new execution date for Daryl Keith Holton for the 1997 first-degree murders of Stephen, Brent, Eric and Kayla Holton. *State v. Holton*, 126 S.W.3d 845 (Tenn.), *cert. denied*, 543 U.S. 816 (2004). On September 18, 2006, the United States Court of Appeals for the Sixth Circuit stayed this Court’s earlier execution date to allow an expedited appeal concerning whether the federal district court properly dismissed a petition for writ of habeas corpus filed by attorneys with Federal Defender Services of Eastern Tennessee, Inc., without Holton’s consent or authorization. On January 9, 2007, the Sixth Circuit affirmed the district court’s dismissal of the unauthorized petition. In addition, the Sixth Circuit’s order reiterated Holton’s position—clearly stated in testimony before the federal district court and in letters filed in the Sixth Circuit—that he does not wish to pursue further appeals of his convictions and death sentence. A copy of the Sixth Circuit’s order is attached as Appendix 1.

In the three years since this Court affirmed Holton's convictions and death sentences, Holton has consistently and repeatedly refused to allow the filing of post-conviction petitions on his behalf in either state or federal court. On May 16, 2005, the Bedford County Circuit Court stayed Holton's execution based upon the filing of an unsigned, unverified, and untimely post-conviction petition by the Tennessee Post-Conviction Defender.¹ This Court granted the State's application for extraordinary appeal and, on May 4, 2006, vacated the lower court's order and dismissed the petition after finding that "the post-conviction court lacked the authority to consider the petition filed on behalf of Holton where the petition was not signed or verified by Holton and where the Defender failed to establish a 'next friend' basis upon which to proceed." *Daryl Keith Holton v. State*, No. M2005-01870-SC-S10-PD, 2003 WL 24314330 (Tenn. May 4, 2006). On May 25, 2006, more than a year after the trial court's unlawful stay, the Court re-set Holton's execution for September 19, 2006.

In the meantime, on September 30, 2005, while state proceedings were ongoing, attorneys with the Federal Defender Services of Eastern Tennessee, Inc., filed a petition in federal district court for habeas corpus relief in Holton's name but without his consent. *Daryl Keith Holton v. Ricky Bell, Warden*, No. 1:05-cv-00202 (E.D. Tenn.). In the first of two federal hearings on the State's motion to dismiss that unauthorized

¹Tenn. Code Ann. § 40-30-120 provides, "[u]pon the filing of a petition for post-conviction relief, the court in which the conviction occurred shall issue a stay of the execution date which shall continue in effect for the duration of any appeals or until the post-conviction action is otherwise final."

petition, Holton testified on July 31, 2006, that he did not wish to proceed with the petition filed by the federal defender or to present any claims for federal habeas relief at that time. (App. 2, p. 7) Holton also affirmed his earlier statement in an October 19, 2005, letter to undersigned counsel that, “I did not and do not authorize the filing of a federal habeas petition on my behalf.” (App. 2, p. 4; App. 3, p. 1) Nevertheless, the district court directed that Holton submit to a competency evaluation by a court-appointed expert to determine his competence to forgo further appeals under the standard set forth in *Rees v. Payton*, 384 U.S. 312 (1966). The court’s expert testified at a second hearing held on September 5, 2006, that his evaluation had revealed that Holton is not currently suffering with any mental disease, disorder, defect or other condition that affects his competence, that he is “especially informed” of his legal position and options, and that he fully understands the legal reasons for and the consequences of his execution and death. (App. 4, p. 5) Before dismissing the petition from the bench, the district court further observed:

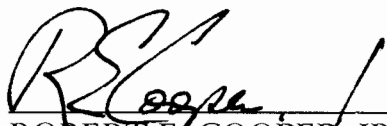
I have seen and heard you [Holton] explain your thought processes and the basis for your decisions. I don’t think anybody in this courtroom who has seen or heard your testimony could doubt that you have the ability to reason and to think rationally. There may be those who disagree with your decision, but it is not up to them to make the decision for you. It is your decision and yours alone to make. . . . Based upon your own stated desire not to pursue a habeas corpus petition, I am going to dismiss the petition.

(App. 4, p. 9)

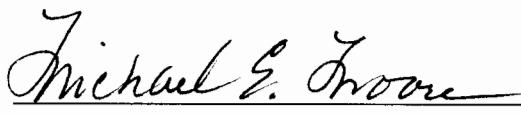
The Sixth Circuit's January 9, 2007, order affirmed the judgment of the district court and removed any legal impediment to Holton's lawful execution. Daryl Holton made competent decisions to forgo state post-conviction and federal habeas corpus review of his convictions and death sentence. In response to the State's previous motion to set an execution date, Holton submitted a letter to this Court stating that he "does not oppose the State's motion to reset an execution date." Moreover, there is no current legal or factual basis why a new execution date should be delayed or denied.

This Court should re-set Holton's execution forthwith.

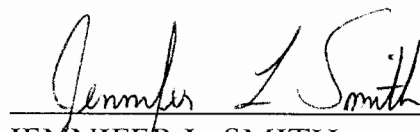
Respectfully submitted,



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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:

Daryl Keith Holton, No. 306263
Riverbend Maximum Security Institution
7475 Cockrill Bend Industrial Road
Nashville, TN 37209

on this 10th day of January, 2007.



JENNIFER L. SMITH
Associate Deputy Attorney General