

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

STATE OF TENNESSEE,)	
)	
)	
v.)	No. M1987-00072-SC-DPE-DD
)	
)	
DONNIE E. JOHNSON.)	Filed May 5, 2006
)	

MOTION TO RESET DATE OF EXECUTION

On August 10, 2004, all state court proceedings in this matter having concluded, this Court ordered that Donnie E. Johnson’s 1985 death sentence be executed on November 16, 2004. On November 9, 2004, the United States District Court for the Western District of Tennessee issued an order staying the execution of the defendant Johnson’s sentence. The stay was issued “pending the Sixth Circuit’s decisions in *In re: Abdur’Rahman* and *Abdur’Rahman v. Bell*, and [the district court’s] subsequent decision on [Johnson’s] Fed. R. Civ. P. 60(b) motion.” *Donnie E. Johnson v. Ricky Bell*, No. 97-3052-D (W.D.Tenn. Nov. 19, 2004) (order granting stay of execution) (copy attached). On November 30, 2005, the district court ruled on, and denied, the defendant’s Rule 60(b) motion, thus dissolving the previously issued stay. *Donnie E. Johnson v. Ricky Bell*, No. 97-3052-D (W.D.Tenn. Nov. 30, 2005) (order denying motion for relief from judgment) (copy attached).¹

¹As the district court noted in its order, the Sixth Circuit decided *Abdur’Rahman* in December 2004; its decision was subsequently vacated by the United States Supreme Court in light of the decision in *Gonzalez v. Crosby*, 125 S.Ct. 2641 (2005), in which the Court “clarif[ied] the circumstances under which a Rule 60(b) motion for relief may run afoul of the AEDPA’s restriction on second and successive habeas petitions.” *Id.*, p. 2. See *Bell v. Abdur’Rahman*, 125 S.Ct. 2991 (2005).

Accordingly, and pursuant to Tenn.Sup.Ct.R. 12.4(E), the State moves that a new date of execution be set forthwith.

The defendant will no doubt argue that the Court should refrain from setting a new date until he has been afforded an opportunity to appeal the district court's denial of his Rule 60(b) motion. But the district court's order makes plain that any such appeal would lack merit, including the Fed. R. Civ. P. 59 motion to alter or amend that is currently before that court.² The standard three-tier review process has long since concluded, and the federal court's stay of execution has dissolved. It is incumbent upon the State to assert its interest in "execut[ing] its moral judgment in [this] case" and 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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²The Sixth Circuit Court of Appeals has docketed this matter but is holding it in abeyance pending a decision from the district court on the Rule 59 motion.

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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 C. Mark Pickrell, 3200 West End Avenue, Suite 500, P.O. Box 50478, Nashville, Tennessee 37205-0478; and Christopher Minton, Assistant Federal Public Defender, 810 Broadway, Suite 200, Nashville, Tennessee, 37203, on this the _____ day of May, 2006.

ALICE B. LUSTRE
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