

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

PAUL DENNIS REID, JR.,)	
)	
Appellant,)	MONTGOMERY COUNTY
)	No. M2001-02753-DDT-DD
v.)	
)	
STATE OF TENNESSEE,)	
)	
Appellee.)	

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

The Office of the Post-Conviction Defender (“PCD”) has moved for a stay of this Court’s September 2005 order setting a June 28, 2006, execution date for Paul Dennis Reid, Jr. PCD asks this court to stay his execution so that he may pursue an appeal under Tenn. R. App. P. 3 from the June 13, 2006, order of the Montgomery County Circuit Court dismissing a “next friend” petition for post-conviction relief filed on Reid’s behalf.¹ The motion should be denied. First, even assuming a “next-friend” may pursue an appeal of the trial court’s orders in these circumstances, PCD failed to pursue the only statutory remedy that exists for review of a post-conviction court’s order denying a motion for stay of execution. Moreover, the trial court’s dismissal of the next-friend

¹That appeal has been docketed by the Court of Criminal Appeals as *Reid v. State*, No. M2001-01294-CCA-R3-PC.

petition is fully consistent with this Court's decision in *Reid v. State*, No. M2005-01870-SC-S10-PD (Tenn. May 4, 2006). Given the last-minute nature of the present motion and his failure to pursue available remedies under this Court's Rules of Post-Conviction Procedure, PCD has failed to provide any justification sufficient to warrant the equitable relief he seeks.

PROCEEDINGS BELOW

On May 23, 2006, PCD filed a petition for post-conviction relief and motion for a stay of execution and appointment of counsel on Reid's behalf. The petition alleged Reid's incompetency and, thus, was filed on his behalf by his sister, Linda Martiniano, Assistant Post-Conviction Defender Kelly Gleason, and Connie Westfall, an investigator with the PCD's office. Following a hearing on June 12, 2006, the Montgomery County Circuit Court dismissed the petition and the motion for appointment of counsel on June 13, 2006, after finding that the submissions failed to satisfy the prerequisites for next friend standing as set forth by the Tennessee Supreme Court in *Reid v. State*, No. M2005-01870-SC-S10-PD (Tenn. May 4, 2006). A copy of the post-conviction court's order is attached. Finding that it is without jurisdiction to grant a stay of execution in the absence of a proper petition, the post-conviction court further denied PCD's motion for a stay of execution: "Arguably, this Court is without jurisdiction to grant [a stay of execution] until it accepts a post-conviction petition. Because the Court finds the

requisite threshold showing has not been made, the petition has not been accepted by this Court. Accordingly, the motion to stay the execution is denied.” (Order, p. 17) The post-conviction court subsequently denied a second motion for a stay of execution filed by PCD pending an appeal of the dismissal of the next friend petition under Tenn. R. App. P. 3. (Order attached)

On June 22, 2006, PCD filed a motion for a stay of execution and for expedited review in the Tennessee Court of Criminal Appeals.² *But see Robert Glen Coe v. Don Sundquist*, No. M2000-00897-SC-R9-CV (Tenn. Apr. 19, 2000) (“Th[e Tennessee Supreme] Court is the highest judicial tribunal of the state and all other courts are constitutionally inferior tribunals subject to the actions of the Court.”) (citing *Barger v. Brock*, 535 S.W.2d 337 (Tenn. 1976)). That same day, PCD filed the instant motion in this Court.

ARGUMENT

1. If this motion is construed to be a motion for review under Tenn. Code Ann. § 40-30-120(d), PCD failed to invoke the statutory procedure for review of the post-conviction court’s order denying the motion for stay of execution and is now time-barred from doing so.

This Court’s own Rules of Post-Conviction Procedure provide the procedure to be followed when a party is aggrieved by a decision of a trial court on a motion for a stay of execution pending consideration of a post-conviction petition. In that event, “[e]ither

² On June 23, 2006, the Court of Criminal Appeals denied the motion for stay. *See Paul Dennis Reid, Jr., by and through Linda Martiniano v. State*, No. M2006-01294-CCA-R3-PD.

party may request review of a trial court's ruling on a motion for stay of execution by filing a motion for review in the Tennessee Court of Criminal Appeals *within five (5) days of the trial court's ruling on the stay of execution.*" Sup. Ct. R. 28, section 10(C) (emphasis added). The procedure requires prompt action by the parties and envisions an expedited determination by both the court of criminal appeals and this Court.

The Court's rule is consistent in all respects with the Post-Conviction Procedure Act itself, which also provides:

(d) Any motion for stay pending consideration of the post-conviction petition must be presented first to the court where the petition is filed. *The decision of the court shall be reviewable by the court of criminal appeals upon the filing of a motion for review. Either party may seek review. . . .*

* * *

(f) Motions for review may be acted upon by a single judge of the appellate court. Such judge may, in lieu thereof, refer the motion to the court. In the court of criminal appeals, such reference will be to a three (3) judge panel of the court in the grand division where the motion is filed. *Review shall be made promptly within five (5) days or within such shorter period as necessary to preclude the issue from becoming moot, whether by a single judge or by the court. . . . The court may consider the last-minute nature of an application to stay execution by resolving against the petitioner any doubts and uncertainties as to the sufficiency of the petitioner's submission.*

Tenn. Code Ann. § 40-30-120(d), (f) (emphasis added).

PCD did not present a motion for review to the court of criminal appeals or this Court, and the time to do so has now expired. Indeed, despite the imminence of his June 28, 2006, execution date, PCD waited *six* days to file a notice of appeal from that decision and another *three* days after that to file redundant motions for stay of execution

in the court of criminal appeals and this Court. Thus, PCD's filings would have been untimely (in the court of criminal appeals) and improper (in this Court) even if they were construed to be motions for review under § 40-30-120(d).

Because there is no post-conviction petition pending, however, Tenn. Code Ann. § 40-30-120 does not afford Ms. Martiniano any standing to seek a stay of execution, let alone a right to seek appellate review of the trial court's order denying her motion for stay. *See Paul Dennis Reid, Jr., by and through Linda Martiniano v. State of Tennessee*, M2006-01294-CCA-R3-PD (Tenn. Crim. App., June 23, 2006) (In denying the motion for stay of execution, the court noted that "if a petition is not deemed to have been properly filed under the statute, there is no authority for either the trial or intermediate appellate court to issue a stay of execution previously ordered by the supreme court.") (Copy of order attached). Nor, for the same reasons, does Ms. Martiniano have any standing to contest alleged violations of any constitutional requirement to conduct a hearing, engage in a colloquy with Reid or have Reid present at a hearing. Further, PCD's contention that it is more difficult for a next friend to obtain a stay of execution than a prisoner who signs and verifies a petition for post-conviction relief is without merit. If Ms. Martiniano qualified as a next-friend under *Reid/Holton* (*See* Argument 2, *infra*), she would be entitled to seek a stay under precisely the same standards applicable to post-conviction petitioners generally.

Moreover, PCD's delay in seeking review of the post-conviction court's order justifies denial of his request for a stay of execution. The Defender's office waited for more than a week beyond the post-conviction court's dismissal of his next-friend application before filing a notice of appeal and, even then, did not seek a stay of execution until several more days.³ Under these circumstances, it cannot credibly be argued that PCD has been diligent in pursuing review of the lower court's decision in an expeditious manner. This Court should consider the last-minute nature of an application for a stay of execution in deciding whether to grant equitable relief.⁴ The last-minute nature of his stay application in this Court should resolve against it the balance of equities involved in his current request.

2. In any event, the post-conviction court's action in this case is consistent with decisions of this Court and does not justify a stay of execution.

In dismissing the next-friend petition, the post-conviction court concluded that the filings by the PCD and/or Linda Martiniano failed to satisfy the standard set forth in *Reid v. State, supra*, for third-party standing because the submissions lacked "specific factual allegations" demonstrating Reid's incompetence to initiate post-conviction proceedings under *Reid v. State, supra*, and *State v. Nix*, 40 S.W.3d 459 (Tenn. 2001).

³It also bears noting that, despite knowledge that Reid faced a June 28, 2006, execution date, PCD allowed 19 days to pass after the Supreme Court's decision in *Reid/Holton v. State, supra*, before filing a next-friend application in the Montgomery County Circuit Court.

⁴"Equity aids the vigilant, not those who sleep upon their rights." William H. Inman, *Gibson's Suits in Chancery*, § 93, p. 89 (7th ed.1988).

PCD challenges the post-conviction court's disposition of the next friend application on two bases: first, that the court erroneously applied the competency standard set forth in *State v. Nix*, 40 S.W.3d 459 (Tenn. 2001); and second, even if Nix supplies the proper standard, the post-conviction court erred in concluding that the putative next friend(s), Kelly Gleason, Connie Westfall and Linda Martiniano, failed to make a prima facie showing sufficient to warrant a competency hearing. The first question is easily resolved against PCD under this Court's decision in *Reid v. State*, No. M2005-01870-SC-S10-PD (Tenn. May 4, 2006), which plainly states: "[A] prima facie showing of mental incompetency requires . . . 'specific allegations that demonstrate the petitioner's inability to manage his personal affairs or understand his legal rights and liabilities.'" *Reid, supra*, slip op. at 10 (quoting *Nix*, 40 S.W.3d at 464).

As to the latter, viewing the PCD's filings in their most favorable light, the post-conviction court did not err in concluding that PCD failed to make a prima facie showing of incompetency under the *Nix* standard and, thus, properly dismissed the next-friend petition without conducting an evidentiary hearing. In *Nix*, this Court held:

to make a prima facie showing of incompetence . . . a post-conviction petition must include specific factual allegations that demonstrate the petitioner's inability to manage his personal affairs or understand his legal rights and liabilities. *Unsupported, conclusory or general allegations of mental illness will not be sufficient* to require tolling and prevent summary dismissal . . . The required prima facie showing may be satisfied by attaching to the petition affidavits, depositions, medical reports, or other credible evidence that contain *specific factual allegations* showing the petitioner's incompetence.

Id. at 464. Here, PCD submitted affidavits of Linda Martiniano, Kelly Gleason, Connie Westfall, George W. Woods, Jr., M.D., and James Simmons and letters from Reid to Linda Martiniano. The court concluded that none of the submissions, even viewed in the most favorable light, made a prima facie showing of incompetence under *Nix*.

The affidavit of Linda Martiniano expressed her belief that “Paul is severely mentally ill [and] does not think or act in a rational manner. . . . When he has talked about giving up his appeals and being executed, he talks about ending the torture of the scientific technology.” The affidavit contains no “specific factual allegations” concerning his ability to “manage his personal affairs or understand his legal rights and liabilities” as required by *Nix*. To the contrary, the affidavit clearly indicates Reid’s awareness of the appeal process.

The affidavits of Assistant Post-Conviction Defender Kelly Gleason and Connie Westfall, an investigator in Ms. Gleason’s office, detail their visits and conversations with Reid, particularly as they related to his delusions related to “scientific technology.” The upshot of both submissions is that Reid believes that his legal proceedings — and most everything else — are scripted, that military intelligence monitors and controls every aspect of his life, and that his attorneys are in collusion with the “scientific technology.” In rejecting these submissions, the post-conviction court concluded that neither provided any relevant information directly related Reid’s understanding of his legal rights and liabilities. Indeed, none of the current submissions provide any materially “new” claims,

all relying on the same basic contention that Reid holds delusional beliefs that he is under constant governmental monitoring through scientific technology and that his legal proceedings have been scripted — “the process is meaningless and the outcome a foregone conclusion.” *Compare with State v. Reid*, 164 S.W.3d 286, 304-05 (Tenn. 2005) (Trial court’s competency determination affirmed after consideration of evidence not materially different from that presented here: “[Reid] told [Dr. Auble] that he had been under surveillance by the government for over thirteen years;” “[T]he government had radiated his body with a magnetic field, which allowed his actions to be monitored on a remote screen by the Central Intelligence Agency;” “[D]efendant believed that the judge, jury, and attorneys were playing roles during the trial that had been scripted;” “[D]efendant believed that he was being monitored by the government and that his attorneys were part of a script to kill him;” “[The defendant’s] reality is distorted. His belief that everything is predetermined at this point. That it doesn’t matter if he helps his defense or not;” “The defendant referred to one of his attorneys as ‘Satan,’ and he believed the attorneys, the prosecutors, and the trial judge were being controlled by a surveillance team with ‘subliminal magnetic technology.’”).

Finally, the affidavit of George W. Woods, Jr., while providing an expert perspective, also misses the point. Dr. Woods’ recitation of Reid’s “scientific technology” delusions largely mirror those already rejected by this Court as a basis for a finding of incompetence to stand trial. Although he makes conclusory statements that

these delusional beliefs “substantially preclude [Reid] from making a rational choice among his legal options,” this Court made clear in *Nix* that more is required.

The post-conviction court properly recognized this Court’s direction that a prima facie showing sufficient to obtain a competency hearing required more than “mere assertions or allegations of past or present mental incompetence,” and more than “[u]nsupported, conclusory, or general allegations of mental illness.” Instead, “specific factual allegations” showing a petitioner’s “inability to manage his personal affairs or understand his legal rights and liabilities” is required. The post-conviction court applied the appropriate standard, and its conclusions are fully supported by the record.

Because PCD is unlikely to succeed on the merits of his appeal from the dismissal of his next-friend petition, he is not entitled to a stay of execution.

3. *In any event, PCD lacks authority to proceed in this matter.*

Finally, there is no authority for PCD to file any appeal (or motion for stay of execution) in this matter in any event. Although the post-conviction court permitted counsel with the Defender’s office to present legal argument in the matter below, the court ultimately declined to enter any appointment order. *See* Tenn. Code Ann. § 40-30-206 (a) (primary responsibility of PCD is to “represent . . . any person convicted and sentenced to death in this state who is without counsel and who is unable to secure counsel due to indigency . . . for the purpose of instituting and prosecuting collateral actions challenging the legality of the judgment and sentence imposed against such

person in state court, and who the court determines requires the appointment of counsel.”). PCD has not been appointed to represent Reid in these proceedings, and there is no statutory authority for it to represent Linda Martiniano, a private citizen of another state, in any appeal in this Court.⁵

⁵Under Sup. Ct. R. 28, section 11(C), this Court specifically permits post-conviction counsel to pursue a *limited* appeal under Tenn. R. App. P. 3 where a trial court determines that a petitioner is competent to withdraw a properly filed petition for post-conviction relief. Here, however, there is neither any appointment order nor statutory authorization for PCD to proceed.

CONCLUSION

For these reasons, the State of Tennessee requests that the motion for stay of execution be denied.

Respectfully submitted,

PAUL G. SUMMERS
Tennessee Attorney General

MICHAEL E. MOORE
Solicitor General

JENNIFER L. SMITH
Associate Deputy Attorney General
Counsel of Record

ELIZABETH T. RYAN
Senior Counsel
P.O. Box 20207
Nashville, Tennessee 37202-0207
(615) 741-3487

Counsel for Respondent

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing was served by facsimile and by mailing same, first-class and postage prepaid, to Kelly A. Gleason, Office of the Post-Conviction Defender, 530 Church Street, Suite 600, Nashville, TN 37243, on this, the ____ day of June, 2006.

JENNIFER L. SMITH
Associate Deputy Attorney General