

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

**PAUL DENNIS REID, JR., by and through LINDA MARTINIANO v.
STATE OF TENNESSEE**

**Circuit Court for Montgomery County
No. 38887**

No. M2006-01294-CCA-R3-PD

ORDER

The Appellant, Paul Dennis Reid, is scheduled to be executed on June 28, 2006. On May 23, 2006, the Appellant, by and through his sister, Linda Martiniano, proceeding as "next friend", filed a petition for post-conviction relief. The petition appears to have been filed within the applicable one year statute of limitations. Tenn. Code Ann. § 40-30-102. However, on June 13, 2006, the trial court dismissed the petition. In Reid v. State, No. M2005-02398-SC-S10-PD (Tenn., May 4, 2006), the supreme court established the procedure a "next friend" must follow in order to initiate a post-conviction proceeding on behalf of an alleged incompetent inmate who does not sign the petition. Although the trial court decided that Ms. Martiniano qualified herself as "next friend" and, therefore, had standing to proceed, the court concluded that the petition did not meet the requisite threshold showing adopted by the supreme court in Reid to warrant a hearing to determine whether the Appellant is incompetent to file a petition on his own behalf. On June 20, 2006, "next friend" filed a notice of appeal to this Court. On June 22, 2006, "next friend" filed a motion for stay of execution pending the outcome of the pending appeal.

As the supreme court observed in Reid, the Post-Conviction Procedure Act only governs proceedings initiated by a petitioner himself or herself. The Act provides that a petitioner may appeal as of right the trial court's dismissal of the petition. Tenn. Code Ann. § 40-30-116. However, neither the Post-Conviction Procedure Act nor the Tennessee Rules of Appellate Procedure specifically provide for an appeal as of right by a "next friend." Similarly, the Act specifically authorizes the court in which a petition is properly filed to stay an execution date. Tenn. Code Ann. § 40-30-120(a). A trial court's denial of a motion to stay in a pending post-conviction proceeding may be appealed to this Court. § 40-30-120(d); Rule 28, § 10(C), Rules of the Supreme Court. However, 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. The trial court in this case concluded that the "next friend" did not satisfy the threshold showing of Appellant's incompetence, and, therefore, dismissed the petition. Accordingly, the appeal before this Court is not from the denial of a petition deemed to have been properly filed under the Post-Conviction Procedure Act. Thus, this Court is without authority to grant a stay of the execution date set by the supreme court.

It is hereby ORDERED that the motion to stay execution is DENIED. The Court is aware that a similar motion is pending in the supreme court. The supreme court is the appropriate court to grant a stay of the execution date set by the supreme court.

PER CURIAM

DAVID H. WELLES, JUDGE
THOMAS T. WOODALL, JUDGE
ALAN E. GLENN, JUDGE