

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

STATE OF TENNESSEE,)	
)	
Appellee,)	
)	DAVIDSON COUNTY CRIMINAL
v.)	
)	No. M1999-00803-SC-DDT-DD
PAUL DENNIS REID,)	
)	(CAPITAL CASE)
Appellant.)	

RESPONSE IN OPPOSITION TO
MOTION FOR STAY OF EXECUTION

Citing Tenn. Code Ann. §40-30-202(a), Reid’s attorney¹ has filed a motion asking this Court to stay Reid’s April 29th execution date in order to give Reid a full year in which to decide whether to file a post-conviction petition. This request ignores the pertinent section of the post-conviction statute, Tenn. Code Ann. §40-30-220(a), which sets out the procedure to be followed in situations such as the one presented here.

In accordance with Tenn. Code Ann. §40-30-220(a), upon affirming Reid’s convictions and death sentences in this case, this Court set the April 29th execution date. If Reid elects to file a post-conviction petition, the post-conviction court, Davidson County Criminal Court, must issue a stay of the execution date pending final determination of the post-conviction proceedings. Tenn. Code

¹The Public Defender’s office was appointed to represent Reid at trial and on direct appeal. Yesterday the United States Supreme Court denied the Public Defender’s motion, on Reid’s behalf, to recognize Reid’s *in forma pauperis* status without the filing of an affidavit of indigency. Since no timely petition for writ of certiorari from direct appeal was filed, Reid’s direct appeal has been completed.

Ann. §40-30-220(a). Prior to the filing of a post-conviction petition, the statute specifically provides that no stay of execution should be granted, except

upon a showing by the petitioner of the petitioner's inability to file a petition prior to the execution date and that such inability is justified by extraordinary circumstances beyond the petitioner's control.

Tenn. Code Ann. §40-30-220(a).² “Any motion for stay pending consideration of the post-conviction petition must be presented first to the court where the petition is filed.” Tenn. Code Ann. §40-30-220(d). Reid has not filed a petition, nor has he demonstrated an inability to file a petition prior to the execution date. Furthermore, he has not presented any motion for a stay to the post-conviction court.

Reid's attorney expressed his concerns with Reid's competence to decide whether to forgo post-conviction review. These concerns are both legally and factually insufficient to support the granting of a stay. The issue presented in this circumstance is much like that faced by the federal courts in *West v. Bell*, 242 F.3d 338 (6th Cir. 2001). West had completed his two tiers of state court review but had not filed a petition for writ of habeas corpus in the federal district court. Attorneys acting on his behalf attempted to stay West's execution date and to request a hearing as to whether West was competent to make a knowing and voluntary waiver of his right to seek federal habeas review. While the district court granted the stay and set a competency hearing, the Sixth Circuit reversed, finding no authority for such action. In so holding, the court noted that there was no procedure requiring a finding of competence not to pursue an avenue of relief. Unless the attorneys could demonstrate West's incompetence and thereby file a habeas petition as “next friend”, West

²The statute clearly contemplates that such a showing should be made initially to the trial court. Subsections (d), (e), and (f) of §40-30-220 set out the role of the Court of Criminal Appeals and this Court in reviewing the post-conviction court's grant or denial of a stay of execution.

was entitled to “be free from being dragged about for mental examinations, hearings, and the like, in processes that he has not invoked, even if purportedly for his benefit.” *West v. Bell*, 242 F.3d at 342.

The same is true of Reid. There is no state procedure requiring a finding of competence to support a decision to forgo seeking any available avenue of relief. If Reid’s attorney could demonstrate Reid’s incompetence, he could file a “next friend” post-conviction petition on Reid’s behalf in the post-conviction court. But to do so, the attorney would have to make a more compelling case than the one presented to this Court.

Reid has made it abundantly clear since the imposition of his death sentences in this case that he has no desire to pursue any appeals. On February 27, 2001, the trial court denied Reid’s *pro se* motion to withdraw his motion for new trial, explaining that Tennessee’s capital sentencing statute mandates Supreme Court review of every death sentence. Once this Court had affirmed his convictions and death sentences, Reid filed a second *pro se* motion again seeking to dismiss all appeals in all courts. Because nothing was currently pending in the trial court, the trial court denied that motion as well. Then on March 26, 2003, Reid filed a *pro se* motion in this Court specifically asserting his intention not to pursue any post-conviction appeals. The reasons Reid gave for making this choice--that he has lost confidence in the judicial system, and that he has been convicted of seven “egregious” homicides--are certainly not irrational. As the Sixth Circuit pointed out in *West*, 242 F.3d at 343, “. . . an infinite desire to thwart the just process of the law is not the only sign of mental competence.”

Although no issue regarding Reid’s competence to stand trial was raised in this case, Reid asserted claims of incompetence in both the Montgomery County “Baskins-Robbins” case and the

Davidson County “McDonald’s” case. In both cases, following lengthy evidentiary hearings, Reid was found competent to stand trial. Dr. Auble’s letter attached to this motion for stay relies on the same information concerning Reid’s mental status that was fully considered in those proceedings. Although her conclusion is based on letters Reid has written since the time of those competency determinations, the underlying premises are the same--Reid’s concerns about government monitoring and control. The defense has not presented any truly new factual assertions to rebut the most recent finding of competence made by the Davidson County Criminal Court in May 2000.³

Even now, if Reid decides to pursue post-conviction relief, he can file a *pro se* petition in the trial court. Pursuant to the post-conviction statute, the trial court would then appoint counsel and enter a stay of execution. Unless and until Reid decides to do so, there is no basis upon which to stay the execution of these lawfully-imposed death sentences. For these reasons, the State respectfully requests that this Court deny the motion for stay filed on Reid’s behalf.

Respectfully submitted,

PAUL G. SUMMERS
Attorney General and Reporter
B.P.R. No. 6285

MICHAEL E. MOORE
Solicitor General
B.P.R. No. 6440

³Of course there is no recognized standard for determining competence not to pursue an available remedy since there is no requirement for an affirmative finding of competence.

GORDON W. SMITH
Associate Solicitor General
B.P.R. No. 5906

AMY L. TARKINGTON
Deputy Attorney General
P. O. Box 20207
Nashville, Tennessee 37202
B.P.R. No. 13435

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing response has been delivered to the office of Jeffrey A. DeVasher, Assistant Public Defender, 1235 Stahlman Building, 211 Union Street, Nashville, Tennessee 37201-5066, by facsimile copy to 615-862-5736, and by first-class mail, postage prepaid, on this the 22nd day of April, 2003.

AMY L. TARKINGTON
Deputy Attorney General

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

STATE OF TENNESSEE,)	
)	
Appellee,)	
)	DAVIDSON COUNTY CRIMINAL
v.)	No.
)	M1999-00803-SC-DDT-DD
PAUL DENNIS REID,)	
)	(CAPITAL CASE)
Appellant.)	

AFFIDAVIT

STATE OF TENNESSEE

COUNTY OF DAVIDSON

I, Amy L. Tarkington, Deputy Attorney General, do hereby swear and affirm that the facts contained in the attached Response in Opposition to Motion for Stay of Execution are true and accurate to the best of my knowledge, information and belief.

AMY L. TARKINGTON
Deputy Attorney General

Sworn to and subscribed before me this _____ day of April, 2003.

NOTARY PUBLIC

My commission expires _____

DESIGNATION OF ATTORNEY OF RECORD FOR STATE

Amy L. Tarkington
Deputy Attorney General
P. O. Box 20207
Nashville, Tennessee 37202
B.P.R. No. 13435
615-741-2216 (phone)
615-532-7791 (facsimile)

The State's attorney of record prefers to be notified via facsimile at 615-532-7791.