

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

PHILIP RAY WORKMAN,)
)
 Respondent/Defendant,)
)
 v.) **S.Ct. No. M1999-01334-SC-DPE-PD**
)
 STATE OF TENNESSEE,)
)
 _____ **Movant.**)

MOTION TO RE-SET EXECUTION DATE

By order dated January 1, 2000, the Federal District Court having exhausted all standard grounds of state and federal appeal, this Court set an execution date of April 4, 2000, in the above-captioned matter. On March 8, 2000, Workman filed a motion in the United States Circuit Court of Appeals for the Sixth Circuit to reopen his federal habeas corpus action; and on March 14, 2000, he filed an application with that court for permission to file a second or successive habeas corpus petition. By order dated March 14, 2000, a three-judge panel of the Sixth Circuit denied both motions. On April 4, 2000, however, ten days prior to Workman's scheduled execution date, the Sixth Circuit, sitting *en banc*, agreed to rehear Workman's motions and issued a stay of execution, with such stay to remain in effect until further order of the court.

By order dated today, September 1, 2000, the *en banc* circuit court of appeals for the Sixth Circuit rejected Workman's motion to reopen,¹ affirming the federal district court's previous denial of Workman's petition for habeas corpus relief, and thus held its previously-issued stay

¹ Citing its prior decision in *In re King* 111 F.3d 1111 (6th Cir. 1997), *cert. denied* 111 S.Ct. 1330 (1999), holding that 28 U.S.C. § 2244(b)(1) prohibits *en banc* review of a panel's action on an application for permission to file a second or successive habeas petition, the *en banc* court declined to rehear the panel's March 14, 2000, denial of Workman's application to file such a petition.

of execution. (copy of order attached)

WHEREFORE, the State of Tennessee respectfully requests that this Court promptly reverse the date of execution for Philip Ray Workman, and further order such execution to proceed except upon further order of this Court, a federal court of competent jurisdiction, or the Governor of the State of Tennessee.

Respectfully submitted,

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PATRICIA A. STUBBS
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MICHAEL J. HARRIS
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing, as all attached exhibits, was served on the Defendant by delivering a copy of same, in-hand, to Christopher L. Dutton, Esq., 444 James Robertson Parkway, Second Floor, Nashville, Tennessee, 37243, and by mailing a copy of same, first-class, postage prepaid, to Paul Dale, Esq., 1111 Cooper Square Tower, 11 South Front Street, Memphis, Tennessee, 38103, on this the 10th day of September, 2010.

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CHRISTOPHER L. DUTTON
Assistant Attorney General

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AFFIDAVIT

I, Joseph E. Dales, Assistant Attorney General, do hereby solemnly affirm that the facts contained in the attached Petition to Enforce Executive Order are true and accurate to the best

of my knowledge and belief.

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I I I I I I I I I I I I
Respectfully,
Signed

Executed and subscribed before me
this day of September, 1911.

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My Commission Expires