

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

PAUL DENNIS REID, JR.,)	
By and through Linda Martiniano)	
as Next Friend,)	
)	
Petitioner/Appellant,)	MONTGOMERY COUNTY
)	C.C.A. No.
)	M2006-01294-CCA-R3-PC
v.)	
)	
STATE OF TENNESSEE,)	
)	
Respondent/Appellee.)	

RESPONSE OF THE STATE OF TENNESSEE
IN OPPOSITION TO APPELLANT’S
MOTION FOR A STAY OF EXECUTION AND
FOR EXPEDITED HEARING

On September 26, 2005, the Tennessee Supreme Court set a June 28, 2006, execution date for appellant, Paul Dennis Reid, Jr. *State v. Reid*, No. M2001-02753-SC-DDT-DD (Tenn. Sept. 26, 2005). The Office of the Post-Conviction Defender (“PCD”) has now asked this court to stay the supreme court’s order 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 Because this court lacks the authority to stay an order of the Tennessee Supreme Court, the motion should be denied.

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)

¹PCD has also filed motion for stay of execution and request for expedited hearing in the Tennessee Supreme Court.

The post-conviction court subsequently denied a second motion by Linda Martiniano for a stay of execution pending an appeal of the dismissal of the next-friend petition under Tenn. R. App. P. 3. (Order attached)

In the absence of the filing of a proper post-conviction petition or other statutory authority, neither the trial court nor this court has the authority to stay an order of the Tennessee Supreme Court. *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)).² Reid has not filed a post-conviction petition, nor did he demonstrate to the trial court an inability to file a petition prior to the execution date so as to justify a stay under Tenn. Code Ann. § 40-30-120(a) (“[u]pon 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”). Moreover, 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*, to establish third-party standing by either of them because their submissions lacked “specific factual allegations”

²While this court undoubtedly has the authority to stay the post-conviction court’s judgment pending an appeal of the decision, the effect of such an order in this case would merely stay *that* judgment, not the Tennessee Supreme Court’s September 2005 order setting the execution date.

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).

Tenn. Code Ann. § 40-30-120 clearly sets forth the procedure to be followed in seeking review of a trial court’s decision on a motion for stay of execution pending consideration of a post-conviction petition.

(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.* The lower court’s determination shall not be set aside unless the movant demonstrates an abuse of discretion. The action of the court of criminal appeals shall likewise be reviewable upon the filing of a motion for review in the Tennessee supreme court. *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). *See also* Sup. Ct. R. 28, section 10(C) (“Either 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.”).

By statute, this court's authority is limited to reviewing the decision of the post-conviction court on a motion for stay of execution under Tenn. Code Ann. § 40-30-120(a). However, PCD has not presented a motion for review to 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 a motion for stay of execution in this court. Thus, PCD's filing would have been untimely even if it were construed as a motion for review under § 40-30-120(d).³ This court is not empowered to grant a stay of execution in the first instance.

PCD's delay in seeking review of the post-conviction court's order also justifies denial of his request for expedited review. Rather than requesting a suspension of this court's rules of procedure at a time that would have allowed a reasonable opportunity to accommodate his request,⁴ 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

³Moreover, if PCD's present filing were construed as a motion for review of the June 21, 2006, order denying a stay of execution pending appeal, the lower court surely cannot be said to have abused its discretion in denying PCD's motion in light of Tenn. Code Ann. § 40-30-120(a), which expressly prohibits a stay of execution prior to the "filing of a petition for post-conviction relief" and the Supreme Court's clear directive in *Coe v. Sundquist, supra*. The court having previously found no proper petition had been filed, it would not constitute an abuse of discretion to deny a stay of execution pending appeal of that decision.

⁴For example, in *Alley v. State*, No. W2006-01179-CCA-R3-PD (Tenn. Crim. App. June 22, 2006), this court received briefs from both parties within one week after ordering expedited review and filed its opinion affirming the post-conviction court less than a week after that. Reid asks this court to accomplish as much in less than one week, including an intervening weekend. His delay in bringing the request to the court does not justify such an extraordinary measure.

appeal and, even then, did not request expedited review until near the time for close of business on June 22, 2006.⁵ 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. PCD's failure to pursue the proper statutory avenue for review of his motion for a stay of execution and the last-minute nature of his request for expedited review of the dismissal of the next-friend application should resolve against it the balance of equities involved in his current request. The case should be docketed like any other case and proceed in accordance with the Rules of Appellate Procedure.

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

⁵It 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.

there is no statutory authority for it to represent Linda Martiniano, a private citizen of another state, in any appeal in this Court.

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

Respectfully submitted,

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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 23rd day of June, 2006.

/s/ Jennifer L. Smith

JENNIFER L. SMITH
Associate Deputy Attorney General