

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED

03/15/2018

Clerk of the
Appellate Courts

STATE v. DONNIE EDWARD JOHNSON

**Criminal Court for Shelby County
No. 8501202**

No. M1987-00072-SC-DPE-DD

ORDER

On December 17, 2013, this Court reset an execution date for Donnie Edward Johnson for March 24, 2015. That execution date was stayed on December 22, 2014, due to a pending declaratory judgment action challenging the constitutionality of the State's lethal injection protocol. In the order staying the execution date, the Court stated that, upon final disposition of the appeal in the declaratory judgment action, this Court shall exercise its authority to set a new date of execution pursuant to Tennessee Supreme Court Rule 12.4(E) ("Where the date set by the Court for execution has passed by reason of a stay or reprieve, this Court shall sua sponte set a new execution date when the stay or reprieve is lifted or dissolved, and the State shall not be required to file a new motion to set an execution date."). Ultimately, this Court affirmed the trial court's dismissal of the claims in the declaratory judgment action. *West v. Schofield*, 519 S.W.3d 550 (Tenn. 2017).

On January 11, 2018, the State filed a notice that the United States Supreme Court had denied certiorari in the two petitions seeking review of this Court's decision in *West*. See *Stephen Michael West, et al. v. Tony Parker, et al.*, 138 S.Ct. 476 (Nov. 27, 2017); *Abu Ali Abdur'Rahman, et al. v. Tony Parker, et al.*, 138 S.Ct. 647 (Jan. 8, 2018). On February 15, 2018, the State filed a Motion to Set Execution Date for Mr. Johnson; the Motion expressly asked the Court to set the execution date prior to June 1, 2018. On March 1, 2018, Mr. Johnson filed a response in opposition to the State's Motion.

On March 2, 2018, the Tennessee District Public Defender's Conference filed a motion requesting permission to file a brief as amicus curiae in this appeal. On March 5, 2018, the Tennessee Association of Criminal Defense Lawyers and Individual Tennessee Attorneys filed a similar motion. On March 9, 2018, the State filed a response opposing the filing of amicus briefs.

After due consideration, it is ORDERED that the motions requesting permission to file amicus briefs are GRANTED. The brief lodged by the Tennessee District Public

Defender's Conference and the brief filed by Tennessee Association of Criminal Defense Lawyers and Individual Tennessee Attorneys shall be accepted as filed as of the date of this order. There is no need for a reply brief from the State. The costs associated with these motions are assessed equally between the Tennessee District Public Defender's Conference, and Tennessee Association of Criminal Defense Lawyers and Individual Tennessee Attorneys.

It is further ORDERED that the State's Motion to Set Execution Date prior to June 1, 2018, is denied. The costs of the State's Motion are assessed to the State of Tennessee.

PER CURIAM