

4. Since that date, Mr. West filed a Motion to Reopen his Post-Conviction Petition. In that Motion, Mr. West requested reopening because: (1) new law from this Court establishes his right to relief based on the fact that his trial counsel was burdened with a conflict of interest at the time of his capital trial; (2) that new case law from the United States Supreme Court demonstrates his right to relief due to ineffective assistance of counsel during the penalty phase of his capital trial; and (3) that this Court should establish a categorical ban on executing inmates, like Stephen West, who suffer from severe mental illness. That Motion was denied by the trial court. The Court of Criminal Appeals denied Mr. West's Application for Permission to Appeal. Mr. West's Application for Permission to Appeal Pursuant to Tenn. R. App. P. 11 is now pending before this Court.
5. Mr. West's Application to this Court raises important questions of law that demonstrate the need for the exercise of this Court's supervisory authority. In particular, Mr. West's issues highlight the need for a careful review of the effectiveness of trial counsel as well as all available mitigating evidence before any death sentence is carried out. Furthermore, recent developments in the science and treatment of severe mental illness, as well as the evolving standards of decency, call on this Court to exercise its supreme authority to interpret the Tennessee Constitution and to recognize that the severely mentally ill must be exempt from the death penalty in this State.
6. In addition to the case now pending before this Court, Mr. West has filed a

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Motion for Relief from Judgment pursuant to Fed. R. Civ. Pro. 60(b) in the federal court. That action is now pending before the Sixth Circuit Court of Appeals. (*West v. Bell*, Sixth Circuit Case Nos. 10-6333 and 10-6338).

Mr. West has argued in that action that the habeas courts erred in failing to consider abundant mitigating evidence. The habeas courts should have granted plenary *de novo* review of his claims of ineffective assistance of counsel during the sentencing phase of his capital trial once the court had concluded that the Tennessee courts' application of the standards enunciated in *Strickland v. Washington*, 466 U.S. 668 (1984) was unreasonable.

7. The United States Supreme Court has accepted *certiorari* in a case that raises the question of whether habeas courts may consider evidence not presented during state post-conviction proceedings after the federal courts find the state court rulings were unreasonable. *Cullen v. Pinholster*, No. 09-1088, 130 S.Ct. 3410 (Mem.)(2010). The very same issue forms the basis of Mr. West's 60(b) motion.
8. Significant legal questions remain unresolved in Mr. West's case. In particular, where important issues affecting the integrity of the trial process and of the appropriateness of the death penalty are before the Court, a stay is warranted. Furthermore, where the United States Supreme Court is poised to address an important issue affecting the outcome of the case, this Court should grant a stay of execution.

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WHEREFORE, for all of the foregoing reasons, this Court should stay Mr. West's
November 9, 2010 execution.

Respectively submitted,

FEDERAL DEFENDER SERVICES OF
EASTERN TENNESSEE, INC.

Stephen A. Ferrell
Stephen A. Ferrell, BPR# 25170
800 S. Gay St., Suite 2400
Knoxville, TN 37929
(865) 637-7979
Fax: (865) 637-7999

MILLER & MARTIN, LLP

Roger W. Dickson *By SAF.*
Roger W. Dickson, BPR#1933
832 Georgia Avenue, Suite 1000
Chattanooga, TN 37402
(423) 756-6600

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document
was emailed and Fed Ex overnight to:

Jennifer Smith, Esquire
Office of Attorney General & Reporter
Criminal Justice Division
P. O. Box 20207
Nashville, TN 37202-0207
phone: (615) 741-4349
fax: (615) 532-7791
email: Jennifer.Smith@ag.tn.gov

this the 4th day of November, 2010.


Stephen A. Ferrell

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