

IN THE TENNESSEE SUPREME COURT  
AT NASHVILLE

STATE OF TENNESSEE                    )  
                                                  )  
                  v.                            )     No.    M1999-00516-SC-R11-PD  
                                                  )  
HENRY HODGES                         )     CAPITAL CASE

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MOTION TO STRIKE *PRO SE* REQUEST  
TO SET EXECUTION DATE

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Counsel for Petitioner Henry Hodges, a death-sentenced inmate, hereby requests that this Court strike Mr. Hodges *pro se* filing of September 15, 2021 requesting that this Court immediately set an execution date for him. This Court should strike the *pro se* motion because Petitioner is represented by appointed counsel, who has also been appointed Petitioner’s guardian. *See Hodges v. Bell, 3:01-cv-0624 (M.D. Tenn.) R. 182, filed Nov. 11, 2004.* Undersigned appointed counsel/guardian does not join in or authorize the filing of this *pro se* request. *See, e.g., Knowles v. State, No. W201800739CCAR3PC, 2020 WL 2614672, at \*2 (Tenn. Crim. App. May 22, 2020)* (“[I]t is well-settled that a petitioner cannot file pleadings *pro se* when represented by counsel.”); *Curtis v. State, No. M201801712CCAR3PC, 2020 WL 476907, at \*16 (Tenn. Crim. App. Jan. 30, 2020)*, perm. app. denied (June 4, 2020) (applying rule that a defendant in a criminal case may not proceed *pro se* while simultaneously being represented by counsel to postconviction proceedings)

(citing *State v. Davis*, 141 S.W.3d 600, 615 n.12 (Tenn. 2004)). Thus, this Court should not accept Petitioner's *pro se* filing and the Motion to Strike may be granted on this basis alone.

Mr. Hodges' *pro se* filing is focused on his dissatisfaction with prison conditions, personnel, and the "dirt bag criminals [he is] surrounded by." Mr. Hodges also states that he has "no appeal" pending that would prevent an execution being set. However, Mr. Hodges does, in fact, have filings pending in this Court that must be ruled upon before a date may be set. Specifically, in the December 30, 2019 Response in Opposition to the State's Motion to set an Execution Date, counsel for Mr. Hodges asserted a claim that he is incompetent to be executed pursuant to *Ford v. Wainwright*, 477 U.S. 399, 406 (1986) and its progeny, and requested an evidentiary hearing thereon. Resp. in Opp. at 4-17. Indeed, recent Petitioner's *pro se* submission to this Court is emblematic of the psychotic, delusional, and irrational manifestations of the serious mental illness that constitutionally prohibits the State of Tennessee from executing him.

Mr. Hodges is undisputedly seriously mentally ill. As early as childhood, Mr. Hodges was hospitalized and treated with powerful antipsychotic medications. He was eventually diagnosed with Bipolar Disorder and post-traumatic stress disorder. These conditions cause him to suffer "significant symptoms of agitated depression, including suicidal ideations, psychomotor agitation, social deterioration, and impulsivity," as well as disassociation, psychotic symptoms, "delusional precepts [and] powerful forces that overwhelm him." Ex. 01 to Resp. in Opp., at 4, 8; Resp. in Opp at 10-11. Additionally, Mr. Hodges brain scans show cortical atrophy. Despite

being treated with powerful antipsychotic medications, he has continued to exhibit signs of psychosis in prison, including visual and auditory hallucinations, altered thought processes and paranoid delusions regarding prison and medical staff, scatolia, suicide attempts and other forms of self-harm. *See* Resp. in Opp. at 11-16. In November 2009, Dr. George Woods concluded, to a reasonable degree of medical certainty that Mr. Hodges was “suffering from an exacerbation of his bipolar disorder, which has disabled him in the past,” including “impulsivity and poor judgment,” and the development of “a grandiose delusion[.]” Ex. 01 to Resp. in Opp., at 26-27. Dr. Woods concluded that Mr. Hodges’ “profound mental illness” rendered him incompetent for execution.

And it is the same today. Mr. Hodges’ recent handwritten letter to this Court requesting that the Court allow his execution to be carried out immediately stems from the same behavior, including grandiose delusions, impulsivity, and disordered thinking, that has plagued him since he was a teenager because of his Bipolar Disorder and traumatic stress disorder. This is yet another example of his extremely impaired decision-making due to the severe mental illness that renders Mr. Hodges incompetent for execution under *Ford, Panetti v. Quarterman*, 551 U.S. 930 (2007), and *Madison v. Alabama*, 139 S.Ct. 718 (2019).

Accordingly, undersigned counsel for Mr. Hodges requests that this Court strike this *pro se* filing and remand this case for a full and fair hearing on Mr. Hodges’ *Ford* competency claim.

s/Kelley Henry

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CERTIFICATE OF SERVICE

I, Kelley J. Henry, certify that a true and correct copy of the foregoing Motion to Strike *Pro Se* Filing was served via email and the electronic filing system, on this the 22<sup>nd</sup> day of September, 2021, to opposing counsel, Amy Tarkington, Associate Solicitor General, P.O. Box 20207, Nashville, Tennessee, 37202.

BY: /s/ Kelley Henry