

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED
01/15/2020
Clerk of the
Appellate Courts

STATE OF TENNESSEE v. OSCAR FRANKLIN SMITH

**Criminal Court for Davidson County
No. 89-F-1773**

No. M2016-01869-SC-R11-PD

ORDER

On September 20, 2019, the State filed a motion to set an execution date for Oscar Franklin Smith stating that Mr. Smith had completed the standard three-tier appeals process and requesting that an execution date be set pursuant to Tennessee Supreme Court Rule 12(4)(A). In his response to the motion to set, Mr. Smith asked the Court to deny the motion because (1) he was convicted and sentenced by a unconstitutionally comprised jury that was biased against him and considered erroneous, extraneous information; (2) his conviction is unreliable; (3) harm to the integrity of the judicial system is now apparent; (4) the death penalty is racist; and (5) the death penalty violates evolving standards of decency. Mr. Smith also requested that this Court issue a certificate of commutation to the governor under Tennessee Code Annotated section 40-27-106 because of certain enumerated extenuating circumstances.

As to the jury claims, Mr. Smith has submitted declarations obtained from trial jurors in November and December 2019. The declarations seek to either call into question one juror's responses during individual voir dire or to challenge discussions that occurred during jury deliberations. Mr. Smith argues that due process requires the creation of a procedural vehicle through which these allegations may be addressed. Not only does Tennessee Rule of Evidence 606(b) prohibit the testimony of jurors about the jury's deliberations but the jurisdiction of this Court is appellate only. *See* Tenn. Code Ann. § 16-3-201.

Mr. Smith also cites various reasons why his convictions are unreliable. The convictions and sentences were affirmed by this Court after thorough review. *See State v. Smith*, 868 S.W.2d 561 (Tenn. 1993). His convictions were vigorously scrutinized through the three-tier review process. Mr. Smith asserts, however, that errors deemed harmless should now be considered prejudicial when considered cumulatively. These

claims, as well as the others presented by Mr. Smith, provide no basis for denying the motion to set an execution date.

Furthermore, after careful review of the request for a certificate of commutation and the supporting documentation and consideration of the arguments summarized above, the Court concludes that under the principles announced in *Workman v. State*, 22 S.W.3d 807 (Tenn. 2000), Mr. Smith has presented no extenuating circumstances warranting issuance of a certificate of commutation. It is therefore ORDERED that the request for a certificate of commutation is DENIED.

Upon due consideration, the State's motion to set an execution date is GRANTED. Accordingly, under the provisions of Rule 12(4)(E), it is hereby ORDERED, ADJUDGED and DECREED by this Court that the Warden of the Riverbend Maximum Security Institution, or his designee, shall execute the sentence of death as provided by law on the 4th day of June, 2020, unless otherwise ordered by this Court or other appropriate authority. No later than May 20, 2020, the Warden or his designee shall notify Mr. Smith of the method that the Tennessee Department of Correction (TDOC) will use to carry out the execution and of any decision by the Commissioner of TDOC to rely upon the Capital Punishment Enforcement Act.

Counsel for Oscar Franklin Smith shall provide a copy of any order staying execution of this order to the Office of the Clerk of the Appellate Court in Nashville. The Clerk shall expeditiously furnish a copy of any order of stay to the Warden of the Riverbend Maximum Security Institution.

PER CURIAM