## IN THE SUPREME COURT OF TENNESSEE AT JACKSON

STATE OF TENNESSEE,	)
	)
V.	)
	)
	) No. M1999-01334-SC-DPE-PD
	) (Trial Court B-81209)
PHILIP WORKMAN,	)
Defendant-Appellant	)
	) Filed May 29, 2003

## RESPONSE TO MOTION TO SET EXECUTION DATE

The motion to set an execution date should be denied because the proceedings in this matter have not concluded:

- 1. Philip Workman files contemporaneously with this response a request that this Court rehear its decision denying permission to appeal pursuant to Tenn.R.App.P. 11. Until this Court resolves Workman's rehearing petition, this State court proceeding has not completed, and setting an execution date is premature.
- 2. Similarly, should this Court grant the rehearing petition, until the Rule 11 proceedings are concluded, an execution date would be premature.
- 3. Should this Court deny Workman's rehearing petition, that denial would make the Court of Criminal Appeals's decision a final judgment subject to certiorari review in the United States Supreme Court. 28 U.S.C. § 1257(a); United States Supreme Court Rule 13.1. The United States Supreme Court entertains certiorari proceedings seeking review of state error coram nobis proceedings. See Teague v. Tennessee, 493 U.S. 874, 110 S.Ct. 210, 107 L.Ed.2d 163 (1989) (denying certiorari to review error coram nobis proceeding); Thigpen v. Alabama, 444 U.S. 1026, 100 S.Ct. 690, 62 L.Ed.2d 660 (1980)(same); Biles v. Watkins, 441 U.S. 953, 99 S.Ct. 2182, 60 L.Ed.2d 1058 (1979)(same); Fay v. Noia, 372 U.S. 391, 435, 83 S.Ct. 822, 9 L.Ed.2d 837 (1963)(recognizing propriety of certiorari for review of state error coram nobis proceedings); Hamilton v. Alabama, 368 U.S. 52, 82 S.Ct. 157, 7 L.Ed.2d 114 (1961)(granting certiorari to review state error coram nobis proceeding). Mr. Workman intends to seek such review should it be necessary. This Court should not curtail Mr. Workman's right to seek federal review of the state proceedings by setting a premature execution date, especially since (1) members of the United States Supreme Court have previously expressed concerns about the validity of Philip Workman's conviction; (In Re Workman, 532 U.S. 954, 121 S.Ct. 1432, 149 L.Ed.2d 369 (2001)(Stevens, Souter, Breyer, JJ., dissenting), and (2) Philip Workman has raised serious, debatable questions about whether he is entitled to coram nobis relief. (See Petition For Rehearing, filed contemporaneously). Simply put, Philip Workman should not be deprived of his right to have the serious issues in his case reviewed by the United States Supreme Court should such review be necessary.

## CONCLUSION

The motion to set an execution date should be denied at this time.

Respectfully submitted,

1 of 2

Christopher M. Minton - No. 14414

Assistant Federal Public Defender

810 Broadway - Suite 200

Nashville, Tennessee 37203

(615) 736-5047

## CERTIFICATE OF SERVICE

I certify that on May 29, 2003, I placed in the United States Mail, first-class postage prepaid, a copy of the foregoing addressed to:

Joseph Whalen

**Assistant Attorney General** 

425 Fifth Avenue North

Nashville, Tennessee 37243

\_\_\_\_\_

Christopher M. Minton

2 of 2