

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

ABU-ALI ABDUR'RAHMAN)
(formerly known as James Lee Jones))
)
) DAVIDSON COUNTY CRIMINAL
)
vs.) NO. M1988-00026-SC-DPE-PD
)
)
STATE OF TENNESSEE)

Filed: December 21, 2001

RESPONSE TO MOTION TO SET EXECUTION DATE

I An execution date should not be set.

Abu-Ali Abdur'Rahman responds to the state's motion to set an execution date and asks this Court to not set an execution date at this time for the following reasons:

1. The original appeal in the federal habeas corpus action, Abdur'Rahman v Bell, Sixth Circuit No. 98-6568, 98-6569, is pending. A mandate has not issued from that appeal and the judgment is not final. When the original habeas corpus petition was filed in this case in Abdur'Rahman v Bell, M.D.Tenn. 3:96-0380, a stay of execution was entered by the federal district court, in which the court "stay[ed] the execution of Petitioner, pursuant to 28 USC § 2251, until further order of the Court." See, Order, entered on May 28, 1996, p. 1, attached hereto as Appendix A. No subsequent order of the court has rescinded this stay. Because the stay of execution issued on the original habeas corpus petition remains in effect

and the appeal from that original petition is still pending, an execution date should not be set.

2. This Court should not set an execution date for the reasons set out in the Motion Pursuant To S.Ct.R. 12.4 For Certificate Of Commutation And Other Relief Pursuant To S.Ct.R. 11., simultaneously filed with this Answer.

II If this Court sets a date for Mr. Abdur'Rahman to be executed, the date should be set at a time in the future, sufficient for the following to occur:

1. A cross-appeal from the original habeas corpus petition filed in federal court in this case is presently pending in the Sixth Circuit Court of Appeals. See, Abdur'Rahman v Bell, Sixth Circuit No. 98-6568, 98-6569. Also pending in the Sixth Circuit Court of Appeals is an appeal, Abdur'Rahman v Bell, Sixth Circuit No. 01-6504, and a transfer pursuant to 28 USC § 2244, Abdur'Rahman v Bell, Sixth Circuit No. 01-6487, from the district court of a post-judgment motion that would potentially resurrect viable claims raised in the original petition, but not yet decided by the district court. These appeals involve no claims that were not raised in the original petition for a writ of habeas corpus, nor do they involve any new facts not presented in federal district court in support of claims presented in the original petition.

Due to the pendency of the above-listed proceedings, all of which involve claims raised and facts presented in the original habeas corpus petition, this Court should set the date at a time that will allow the pending matters to resolve.

2. Should this Court set an execution date, Mr. Abdur'Rahman will be seeking

executive clemency pursuant to Title 40, Chapter 27 of the Tennessee Code Annotated. He will apply for clemency, seek a hearing, prepare, and present a case for clemency. Based on the experience of past applicants, he anticipates that this will be the course of action that he will pursue in that eventuality. The existing record indicates, for example, that Mr. Abdur'Rahman has had a very good record, particularly since he has been in custody in Tennessee, which began in 1986. See, Summary of Post-Trial Social History, attached hereto, as Appendix B. Even since 1972, when he was sentenced as an adult to serve time in the Federal Bureau of Prisons, it appears that Mr. Abdur'Rahman's record has apparently been free of violence, which is remarkable given the hostile environment in which he lived during that period of time until he was paroled in 1983. These matters need to be investigated and developed for a clemency hearing. For that he reason, Mr. Abdur'Rahman seeks a reasonable amount of time to pursue that course of action.

3. As set out in separate pleadings simultaneously filed with this pleading, this Court is put on notice of Mr. Abdur'Rahman's impaired mental state. Due to that impaired mental state, Mr. Abdur'Rahman may be incompetent to be executed. If his impairment is sufficient to be render Mr. Abdur'Rahman incompetent, he and his counsel anticipate that a hearing on his competency to be executed will be necessary to make that determination. The hearing will involve the retention by Mr. Abdur'Rahman and by the state of potential witnesses with expertise in matters of mental status. The designated experts will have to review records, interview Mr. Abdur'Rahman, administer tests, consult with others, prepare

to testify, and testify in an evidentiary hearing. An appellate review of the decision of the trial court should be expected. Generally, see, Van Tran v State, 6 S.W.2d 257 (Tenn. 1999). Mr. Abdur'Rahman requests that an execution date be set at a time sufficient to allow these events to transpire.

4. It would work an unfair prejudice against Mr. Abdur Rahman to set an execution date in the near future due to the currently existing bias against Muslims and persons of Middle Eastern relations. Since the terrorist attack on the World Trade Center and the Pentagon on September 11, 2001, this country has been at war with terrorist entities in the Islamic world. Throughout the country, and most importantly in this state, prejudices against persons associated with middle eastern culture have markedly increased, since the tragic events of September 11, 2001. The United States Government has since passed draconian legislation that has all but eliminated some of our most cherished civil liberties in an attempt to combat the threat of terrorist attack, which is perceived to be more fearsome and insidious due to its virtual invisibility. The media has reported that individuals have recently been arrested in various parts of this country based on an Islamic or middle eastern profile, and that persons of Islamic and middle eastern appearance are being physically attacked and publicly denigrated.

On November 27, 2001 a poll was released that had been conducted under the supervision of political scientist Richard Pride of Vanderbilt University. The poll indicated that the only 49% of the random respondents felt safe in their personal life. An

overwhelming majority, 86%, supported the use of American troops inside Afghanistan, and 69% supported the use of American troops in other countries, if terrorists are “linked” to those countries. Most importantly, 62% of the respondents supported “the idea that people of Middle Eastern background and appearance should undergo special, more intensive security checks in order to live in this country.” A copy of the full text of the poll is attached hereto as Appendix C; a copy of a newspaper article about the same poll, entitled “Poll: 62% back scrutiny of people from Middle East” that appeared in the Nashville Tennessean on November 28, 2001 is attached hereto as Appendix D; a copy of an Opinion article discussing the results of the poll that appeared in the Nashville Tennessean on December 2, 2001 is attached hereto as Appendix E.

There is little doubt that Mr. Abdur’Rahman will be the unfortunate object of some of this recently developing increase in prejudice against people of the Islamic faith and middle eastern persuasion. Undersigned counsel is concerned about the implications of this anticipated prejudice. In a recent feature article in the Nashville Scene, dated December 6, 2001, Mr. Abdur’Rahman’s photograph appeared on the cover of the publication and twice within the full article with a full beard and a Kufi, the attire of one practicing the Islamic faith. A copy of the Nashville Scene article is attached hereto as Appendix F. In these times, his name alone, Abu-Ali Abdur’Rahman, is sufficient to incur the wrath of racists and bigots. Plus, Mr. Abdur’Rahman is a member of the most despised identifiable population in this state, the inmates on Tennessee’s death row; and, it will be easy to attach additional

prejudice to one, who already has the stigma of being an inmate on death row.

Mr. Abdur'Rahman asks this Court to set an execution date, if it must, at a time in the distant future sufficiently for the bias against his religion and cultural affiliation to dissipate.

For the reasons set out above, Mr. Abdur'Rahman prays that this Court to:

1. Deny the state's motion to set an execution date
2. In the alternative, set an execution date, if it must, at a time that will reasonably allow the above-cited events to transpire and in no event no sooner than 180 days from the date of this response.

Respectfully submitted,
Counsel for Abu-Ali Abdur'Rahman

William P. Redick, Jr.
P.O. Box 187
Whites Creek, Tennessee 37189
Bd. Prof. Resp. No. 6376

Bradley A. MacLean
Stites & Harbison
Suntrust Ctr., 424 Church St., Ste. 1900
Nashville, Tennessee 37219-2327

CERTIFICATE OF SERVICE

I, hereby, certify that a copy of the foregoing was sent by United States Mail to Mr. Gordon W. Smith, Office of Attorney General, 425 5th Ave. N., Nashville, Tennessee 37243 on this the 21st day of December, 2001.

William P. Redick, Jr.