

**IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE**

ABU-ALI ABDUR'RAHMAN)	
)	
Respondent/Defendant,)	
)	
v.)	NO. M1988-00026-SC-DPE-PD
)	
STATE OF TENNESSEE)	
)	
Movant.)	

OPPOSITION TO MOTION TO RESET EXECUTION DATE

Because a Stay of Execution entered by the United States Supreme Court is still in effect, this Court has no authority to reset an execution date in this case and the state's Motion should be denied.¹

On April 8, 2002, the United States Supreme Court issued a stay of execution in this case. The Court wrote:

The application for a stay of execution of sentence of death ... is granted pending the disposition of the **petition** for writ of certiorari. Should the petition for a writ of certiorari be denied, this stay shall terminate automatically. In the event the petition for a writ of certiorari is granted, the stay shall terminate upon the **sending down of the judgment of this Court.**

122 S.Ct. 1463; 152 L.Ed.2d 461 (emphasis added). The petition for certiorari was granted on April 22, 2002. Therefore, the stay of execution remains in effect pending the issuance of the

¹By the filing of this motion, the defendant does not waive any other defenses he may have to the setting of an execution date, including but not limited to: the right to file a petition for a certificate of commutation, a claim that he is incompetent to be executed, and a claim that the method of execution is legally invalid or unconstitutional.

judgment of the Supreme Court.

The Supreme Court's order of December 10, 2002 does not constitute the issuance of the judgment of that Court, and no judgment of that Court has been sent down. Mr. Abdur'Rahman has twenty-five days from the Supreme Court's recent action, or until January 6, 2003, to file a petition for rehearing. S.Ct.R. 44.. Mr. Abdur'Rahman will file such a petition within the required time. Until Mr. Abdur'Rahman has an opportunity to file his petition for rehearing, and until the Supreme Court rules on that petition, the Supreme Court will not issue its judgment in Mr. Abdur'Rahman's case.² The Supreme Court will not send down the judgment until after the Supreme Court finally disposes the petition for rehearing. *See* S.Ct.R. 45. *See, also, R. Simpson & Co. v. Commissioner*, 321 U.S. 225, 229-230, 64 S.Ct. 496, 498, 88 L.Ed. 688, 690 (1944) (discussing the 25-day period for filing petitions to reconsider and characterizing dismissals as "qualified until the 25-day period expires"). Thus, this court has no authority to issue an execution date because no judgment from the Supreme Court has issued or has been sent down, and therefore the Supreme Court's stay of execution remains in effect. *See* 28 U.S.C. § 2251.

²*See, e.g., Ford Motor Company v. McCauley*, S.Ct. No. 01-896; *Adarand Constructors, Inc. v. Mineta*, S.Ct. No. 00-730; *District of Columbia v. TriCounty Industries*, S.Ct. No. 99-1953 (Docket Sheets attached hereto as Collective Exhibit A). In each of these cases, the Supreme Court granted a petition for writ of certiorari, the parties filed their briefs, the Court conducted oral argument, and then the Court dismissed the writ of certiorari as improvidently granted. In each case the Court's judgment was not issued until more than twenty-five (25) days after the writ was dismissed, the time period allowed for filing a petition for rehearing under S.Ct.R. 44. This is the customary practice of the Supreme Court.

Moreover, Mr. Abdur'Rahman has two appeals pending in the courts of this state:

In *Abdur'Rahman v. State of Tennessee*, CCA No. M2002-01561-CCA-R28-PD, Mr. Abdur'Rahman has pending before this Court an Application for Permission to Appeal, under Tenn.R.App.P. 11, from the lower courts' denial of his motion to reopen his post-petition proceeding.

In *Abdur'Rahman v. Sundquist, et al.*, Case No. 02-2236-III, Chancery Court for Davidson County, Mr. Abdur'Rahman has pending before the Chancery Court a complaint challenging the constitutionality and legal validity of the Tennessee Department of Correction's lethal injection protocol. Discovery in that case is currently underway, and an evidentiary hearing has not yet been set.

For these reasons, this Court lacks the authority to set an execution date; and, in any event, the setting of an execution date would be premature. Accordingly, the state's motion to reset an execution date should be denied.

Respectfully submitted,

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VERIFICATION

I, Bradley A. MacLean, do hereby swear and affirm that the facts contained in the attached Opposition to Motion to ReSet Execution Date are true and accurate to the best of my knowledge and belief.

Bradley A. MacLean

Sworn to and subscribed before me
this the ____ day of December, 2002.

NOTARY PUBLIC

My Commission Expires

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by hand delivery upon Joseph F. Whalen, Assistant Attorney General, Office of the Tennessee Attorney General, 500 Charlotte Avenue, Nashville, TN 37202-0207, on this the 11th day of December, 2002.

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Bradley A. MacLean

DESIGNATION OF ATTORNEY OF RECORD
FOR MR. ABDUR'RAHMAN

Mr. Abdur'Rahman designates the following attorneys of record:

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Mr. MacLean prefers that he be notified of orders or opinions of the Court by email.

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