

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

STATE OF TENNESSEE V. BILLY RAY IRICK

Criminal Court for Knox County
No. 24527

FILED
AUG 13 2010
Clerk of the Courts

No. M1987-00131-SC-DPE-DD - Filed: August 13, 2010

ORDER

On July 19, 2010, this Court granted the State's motion to set an execution date for Billy Ray Irick and ordered the issue of Mr. Irick's competency remanded to the Criminal Court of Knox County for an expeditious determination. On July 22, 2010, Mr. Irick filed a "Motion to Vacate Execution Date Given Imminent Reopening of Federal Habeas Proceedings and Motion to Vacate Ford Proceedings without Prejudice to Renewal Following Conclusion of Habeas Proceedings." On July 22, 2010, Mr. Irick also filed a "Motion for Additional Time to Prepare and Present Evidentiary Hearing as to Incompetence to be Executed." On August 4, 2010, this Court entered an order denying both motions.

On August 9, 2010, Mr. Irick filed a "Motion to Reconsider Denial of Motion to Vacate Execution or, in the Alternative, to Reschedule Competency Hearing Set for August 16, 2010." Attached to the motion is a copy of an order of the United States District Court for the Eastern District of Tennessee granting Mr. Irick's Fed. R. Civ. P. 60(b) motion in part and reopening Mr. Irick's habeas corpus proceedings. Mr. Irick contends that as a result of this order, the federal district court's stay of execution, issued on December 7, 1998, in connection with his original federal habeas corpus proceedings, is now in effect and prohibits any state action regarding his execution, including a competency hearing. In the alternative, Mr. Irick asserts that his competency hearing will result in a waste of judicial resources because of the time necessary to litigate his reopened habeas corpus action. Mr. Irick thus asks the Court to suspend the competency proceedings until the conclusion of his federal habeas corpus proceedings, including any appeal or application for certiorari.

In its response, the State says that on August 9, 2010, Mr. Irick filed a motion for a stay of state-court proceedings in the United States District Court for the Eastern District of Tennessee. The State argues that Mr. Irick's motion to reconsider is duplicative and without merit under the rule, previously recognized by this Court, that a request for a stay of execution in a capital case to litigate claims in a federal court is more appropriately addressed

to the federal court. The State also asserts that the original stay issued by the district court has “long since expired.” In support of its contention, the State has attached to its response an order of the District Court filed April 23, 2001, providing that the stay previously entered in the habeas corpus case “shall remain in effect for forty-five (45) days after the date of entry of this Order, pending the filing of a notice of appeal.”

On August 12, 2010, the State filed in this Court a “Notice of Filing” that on August 12, 2010, the District Court had filed an order denying Mr. Irick’s motion for a stay. In the order, attached to the notice, the District Court stated that it is not anticipated that the federal habeas corpus matter will interfere with Mr. Irick’s execution date.

Upon due consideration of the motion to reconsider, the State’s response and notice of filing, and the attachments to the motions and notice, the Court concludes that the motion to reconsider should be denied.

It is so ORDERED.

PER CURIAM