

IN THE TENNESSEE SUPREME COURT
AT NASHVILLE

STATE OF TENNESSEE)
)
v.) No. M1999-01334-SC-DPE-PD
) Filed: March 15, 2007
PHILIP RAY WORKMAN)

MOTION TO VACATE EXECUTION DATE

On January 17, 2007, this Court set a May 9, 2007 execution date in this matter. Since then, however, various events have occurred in Tennessee which warrant the vacation of that date:

On February 1, 2007, the Governor issued Executive Order 43 declaring a ninety-day moratorium on executions, pending the Commissioner of Correction's comprehensive review of the manner in which death sentences are administered in Tennessee. See Exhibit 1 (Executive Order 43). The Governor simultaneously issued reprieves to four (4) inmates for whom this Court had set execution dates in that ninety-day period.¹ The Governor's moratorium is set to expire May 2, 2007, just a week before the scheduled May 9, 2007 execution date in this case. Id.²

Also, since this Court set the May 9, 2007 execution date, the 105th General Assembly has taken under consideration various bills relating to the execution of capital sentences in Tennessee. Before adjourning (likely at the end of May), the General Assembly will be considering and may pass any of the following measures relating to executions in Tennessee:

¹ Those inmates are Daryl Holton (February 28, 2007 execution date set on January 30, 2007); Mikaeel Abdullah Abdus'Samad (March 7, 2007 execution date set on December 20, 2006); Pervis Payne (April 11, 2007 execution date set on September 19, 2006); Edward Harbison (February 22, 2007 execution date set on August 15, 2006).

² In fact, in court filings, even the Commissioner assumed that Workman's execution date had been stayed by the Governor's Order: "[T]hat executive order stays the execution of all condemned Tennessee inmates presently scheduled for execution." See Harbison v. Little, M.D.Tenn.No. 3:06-cv-1206, R. 35, p. 3 (Memorandum Of Defendant George Little, Ricky Bell, And John Does In Support Of Motion To Dismiss).

(1) Bills requiring the Attorney General and Reporter, by October 1, 2007, to evaluate, *inter alia*, Tennessee's ability to meet the constitutional prerequisites to imposing capital punishment;³

(2) Bills requiring the House and Senate Judiciary Committees to examine, by January 15, 2008, the fairness of the administration of the death sentence in Tennessee, with an accompanying moratorium on executions until April 15, 2008;⁴

(3) Bills appointing a sixteen-member committee to sit from 2007-2009 to study capital punishment in Tennessee and to make recommendations to insure that capital punishment is uniform in application and free from bias and error;⁵ and

(4) Bills requiring that no execution take place until May 2, 2009, while studies of capital punishment are being conducted.⁶

Certainly, each of these measures would have an impact on whether Philip Workman should be executed, and if so, when. This is especially true because Philip Workman's case involve serious issues relating to the veracity of evidence used to convict him and sentence him to death. It appears, however, that such measures will not be finally addressed until after May 9, 2007.

Under these circumstances, the prudent course is either: (1) to vacate Philip Workman's

³ SB 1184 (Introduced February 8, 2007 by Senator Black); HB 799 (Introduced February 8, 2007 by Representative Casada). See Joint Exhibit 2.

⁴ SB 635 (Introduced February 8, 2007 by Senator Flinn); HB 1357 (Introduced February 14, 2007 by Representative Turner). See Joint Exhibit 3.

⁵ SB 1911 (Introduced February 8, 2007 by Senator Jackson); HB 2162 (Introduced February 15, 2007 by Representative Briley). See Joint Exhibit 4.

⁶ SB 2069 (Introduced February 21, 2007 by Senator Flinn); HB 1985 (Introduced February 15, 2007 by Representative Turner). See Joint Exhibit 5.

current execution date, subject to being re-set by motion following the conclusion of the legislative session; or (2) to re-set the date to a date after the legislative session has concluded. At a minimum, in the interest of justice and fairness, this Court should vacate the May 9, 2007, date, subject to being re-set in the same manner as in the cases involving the four (4) inmates who received reprieves until May 2, 2007. Given the mere fortuity of timing involved in the Governor's order, it is appropriate that Philip Workman be placed on the same footing as those other inmates: He, too, would have received a reprieve had this Court in January instead chosen a May 1 execution date, or had the Governor provided the Corrections Commissioner a mere seven (7) more days to perform his duties under the Executive Order.

Especially where members of the General Assembly are seeking to insure that capital punishment in Tennessee is "impartial" "equitable" and "free from bias,"⁷ this mere fortuity of timing should not mean that Philip Workman faces execution while others similarly situated do not.

CONCLUSION

The motion to vacate the May 9, 2007 execution should be granted. The Court should either: (1) Re-set the date to a date following the conclusion of the 105th General Assembly; (2) Vacate the date pending the conclusion of the 105th General Assembly; or (3) Vacate the date, subject to being re-set after May 2, 2007, just like the other inmates who have been reprieved until then.

⁷ See SB 1911, HB 2162.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been hand-delivered to Joseph Whalen, Office of the Attorney General, 425 5th Avenue North, Nashville, Tennessee 37243 on this ___ day of March, 2007.

Exhibit 1

Exhibit 2

Exhibit 3

Exhibit 4

Exhibit 5