

APPENDIX 1

State v. Zagorski, No. M1996-00110-SC-DPE-DD (Tenn. Oct. 9, 2018) (order)

FILED

10/09/2018

Clerk of the
Appellate Courts

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

STATE OF TENNESSEE v. EDMUND ZAGORSKI

**Circuit Court for Robertson County
No. 6052**

No. M1996-00110-SC-DPE-DD

ORDER

Over thirty-four (34) years ago, Edmund Zagorski was convicted for two counts of first-degree murder and sentenced to death on each count. He is scheduled for execution by lethal injection on October 11, 2018. On October 8, 2018, this Court denied a declaratory judgment challenge to the constitutionality of Tennessee's lethal injection protocol, a case in which Mr. Zagorski was a participant. *Abdur'Rahman et al. v. Parker et al.*, ___ S.W.3d ___, No. M2018-01385-SC-RDO-CV (Tenn. Oct. 8, 2018). On October 9, 2018, Mr. Zagorski filed a motion to stay his execution pending disposition of his petition for writ of certiorari in the United States Supreme Court.

Under Tennessee Supreme Court Rule 12(4)(E), this Court will not stay an execution pending resolution of collateral litigation in federal court. A request for a stay of execution pending litigation of claims in federal court is more appropriately addressed to the federal courts. *See Coe v. State*, 17 S.W.3d 251, 251 (Tenn. 2000). Furthermore, the Court will not stay an execution pending resolution of collateral litigation in state court "unless the prisoner can prove a likelihood of success on the merits of that litigation." Tenn. Sup. Ct. R. 12(4)(E). Given our holding in *Abdur'Rahman*, the United States Supreme Court's recent denial of a stay in a related proceeding raising these same issues, *Irick v. Tennessee*, 2018 WL 3767151 (U.S. Aug. 9, 2018), and after due consideration of the arguments set forth in the motion, we conclude that Mr. Zagorski has failed to satisfy this standard. Accordingly, the motion to stay is denied.

PER CURIAM

SHARON G. LEE, J., DISSENTING