

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE

FILED

03/15/2018

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. DAVID EARL MILLER

Criminal Court for Knox County

No. 12080

No. E1982-00075-SC-DDT-DD

ORDER

On December 17, 2013, this Court set the execution of David Earl Miller for August 18, 2015. On March 31, 2015, this Court vacated its order of December 17, 2013, due to an appeal of a declaratory judgment action challenging the constitutionality of Tennessee's lethal injection protocol. In the March 31, 2015 order, the Court stated that, upon final disposition of the appeal in the declaratory judgment action, this Court shall exercise its authority to set a new date of execution. *See* Tenn. Sup. Ct. R. 12.4(E) ("Where the date set by the Court for execution has passed by reason of a stay or reprieve, this Court shall sua sponte set a new execution date when the stay or reprieve is lifted or dissolved, and the State shall not be required to file a new motion to set an execution date."). The Court ultimately affirmed the trial court's dismissal of the claims in the declaratory judgment action. *West v. Schofield*, 519 S.W.3d 550 (Tenn. 2017).

On January 11, 2018, the State filed a notice that the United States Supreme Court had denied certiorari in the two petitions seeking review of this Court's decision. *See Stephen Michael West, et al. v. Tony Parker, et al.*, 138 S.Ct. 476 (Nov. 27, 2017); *Abu Ali Abdur'Rahman, et al. v. Tony Parker, et al.*, 138 S.Ct. 647 (Jan. 8, 2018). On February 15, 2018, the State filed a Motion to Set Execution Date for Mr. Miller; the Motion expressly asked the Court to set the execution date prior to June 1, 2018. On March 1, 2018, Mr. Miller filed a response in opposition to the State's Motion.

On March 2, 2018, the Tennessee District Public Defender's Conference filed a motion requesting permission to file a brief as amicus curiae in this appeal. On March 5, 2018, the Tennessee Association of Criminal Defense Lawyers and Individual Tennessee Attorneys filed a similar motion. On March 9, 2018, the State filed a response opposing the filing of amicus briefs.

After due consideration, it is ORDERED that the motions requesting permission to file amicus briefs are GRANTED. The brief lodged by the Tennessee District Public

Defender's Conference and the brief filed by Tennessee Association of Criminal Defense Lawyers and Individual Tennessee Attorneys shall be accepted as filed as of the date of this order. There is no need for a reply brief from the State. The costs associated with these motions are assessed equally between the Tennessee District Public Defender's Conference, and Tennessee Association of Criminal Defense Lawyers and Individual Tennessee Attorneys.

It is further ORDERED that the State's Motion to Set Execution Date is denied insofar as it seeks a date prior to June 1, 2018. The Court intends to enter a separate order setting an execution date in this matter in accordance with its authority pursuant to Tennessee Supreme Court Rule 12.4(E). The costs of the State's Motion are assessed to the State of Tennessee.

PER CURIAM