

**DEATH PENALTY CASE**  
**EXECUTION DATE: AUGUST 5, 2025**  
Case No. M2025-01095-SC-RDO-CV

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

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BYRON BLACK,  
Applicant,

v.

FRANK STRADA, et. al,  
Respondents.

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Davidson County Chancery Court Case No. 25-0414-IV

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**MOTION FOR STAY OF EXECUTION**

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Over two days of live evidence, Byron Black established that he was entitled to have his ICD deactivated prior to his execution, lest he be subject to the severe pain and suffering of having his heart repeatedly shocked back into rhythm during his execution. On July 31, 2025 (mere days before his execution), this Court vacated the preliminary injunction that granted that relief—not because of any deficiency in Mr. Black’s showing but because this Court concluded, on an issue of first impression, that a Tennessee trial court cannot issue a preliminary injunction bearing on the logistical issues surrounding an execution. The result is that Mr. Black faces an imminent execution without his ICD having been deactivated, due entirely to newly propounded procedural law. If Mr. Black has no course for relief in the trial court, then he is entitled to the opportunity to present his request for relief to this Court directly. Because there is no feasible way for him to do so prior to his scheduled execution on August 5, 2025, Mr. Black requests a stay.

The standard governing a stay of execution depends on the nature of the stay under consideration. A movant requesting an indefinite stay “pending resolution of collateral litigation in state court” must show that he “can prove a likelihood of success on the merits in that litigation.” Tenn. R. Civ. P. 12.4(E). Because Mr. Black demonstrated a likelihood of success on the merits during the chancery court’s evidentiary hearing, he believes that he is entitled to, and would welcome, such a stay. Mr. Black’s current procedural predicament, however, can likely be addressed with a more modest, targeted stay.

A delay that is not tied to the resolution of collateral litigation would not require this Court to resolve any issues related to the

likelihood of Mr. Black’s success in his pending chancery court litigation. *Cf. State v. Irick*, 556 S.W.3d 686, 689 (Tenn. 2018) (applying the “likelihood of success on the merits” standard only after holding that the request was based on collateral state court litigation). Nor would such a stay implicate any of the other fixed standards or processes set out in Rule 12—for example, the *Van Tran* process governing competence issues or the *Workman* standard governing commutation requests. *See* Tenn. Sup. Ct. R. 12.4(A) (citing *Workman v. State*, 22 S.W.3d 807 (Tenn. 2000); *Van Tran v. State*, 6 S.W.3d 257 (Tenn. 1999)). Rather, a limited stay to accommodate the need to resolve this issue would fall within this Court’s broad power to modify its own previous Order setting the execution date—the same power that this Court cited, in its Opinion, as the exclusive mechanism for addressing Mr. Black’s concerns. *Black v. Strada*, Op. of July 31, 2025 at 6–7.

This Court, in its Opinion, noted the possibility that the parties may be able to “reach an agreement” to resolve this issue, despite the Court’s vacating of the injunction granting Mr. Black the relief he requested. *Id.* at 7. It is entirely possible that such an agreement could be reached. Based on the history of this case, however, Mr. Black believes that any such agreement is almost certainly impossible in the absence of a stay. As Mr. Black detailed at length in his Answer and his Motion to Strike, TDOC’s approach to the issue of Mr. Black’s ICD has been one of consistent foot-dragging and obfuscation. *Black v. Strada*, Answer at 4–13, 36–39; Motion to Strike at 2–3. It does not seem likely that the agency

will become more amenable to collaboration now that this Court has freed it from any enforceable obligation to address Mr. Black's concerns.

A stay would, moreover, afford this Court the opportunity to establish a structure for permitting Mr. Black—and other, future individuals facing execution—to raise secondary and collateral concerns related to executions that, due to the Court's ruling, the state's trial courts are now powerless to address. Tennessee's death row has an elderly population, with all of the medical complications attendant to aging. This will not be the last time that an execution in this State raises questions other than when it will be performed or what the method of execution will be. There is now, however, no mechanism for presenting those considerations to this Court short of a full litigation of a claim on the merits, followed by an appeal. While that option might be sufficient in some instances, sometimes it will not be (e.g., due to time constraints). That was the case here, where Mr. Black's execution date was set by this Court while his grievance regarding this issue was pending. Mr. Black has been diligently litigating this case on an expedited basis, but it was simply not plausible for him to have obtained a full, final judgment in the few months he would have had to do so. If Mr. Black is not afforded the opportunity to present his claims to this Court, he will have been deprived of the opportunity to present them to any court with power to help him at all—despite the fact that the one court that considered these issues on the merits found that Mr. Black was entitled to relief.

Although this Court's jurisdiction is appellate only, Tenn. Const. Art. VI, § 2, and the Court therefore cannot entertain an original action on this issue, there are various approaches that this Court could take to

considering Mr. Black’s arguments—whether through a special master, *see In re Burson*, 909 S.W.2d 768, 769 (Tenn. 1996) (appointing a special master to develop a factual record and make conclusions of law in a case challenging the constitutionality of a Tennessee statute after determining the case could not be resolved “without an underlying factual foundation”), a special scheduling order, or an amendment to Rule 12.4. It is within this Court’s discretion to determine what those procedures will be. Whatever they are, however, Mr. Black should be permitted to avail himself of them.

Mr. Black has been diligent and straightforward in his pursuit of this issue. Despite TDOC’s repeated aspersions that he was simply seeking a stay, Mr. Black never requested a stay related to this issue until now—when there is truly no other way for him to assert his rights. That stay should be granted, either for a limited period of time sufficient to allow the parties to confer to resolve the ICD issue or for a sufficient period of time for this Court to consider Mr. Black’s request. If no such stay is granted, the result will be that Mr. Black was denied his day in court on this issue—after enforceable injunctive relief had been awarded—based solely on a newly announced, retroactively applied procedural rule. Neither the basic principles of justice nor the constitutional guarantee of due process would countenance such a result.

Respectfully submitted this 31st day of July, 2025.

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## **CERTIFICATE OF SERVICE**

I, Kelley J. Henry, certify that on July 31, 2025, a true and correct copy of the foregoing was served via the Court's electronic filing system to opposing counsel, Nicholas Spangler, Associate Solicitor General.

/s/ Kelley J. Henry  
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