ORIGINAL

DEATH PENALTY CASE
EXECUTION DATE: AUGUST 5, 2025
Case No. M2000-00641-SC-DPE-CD

IN THE TENNESSEE SUPREME COURT
AT NASHVILLE

BYRON BLACK,
Appellant,

v.

STATE OF TENNESSEE,
Appellee.

Davidson County Criminal Court Case No. 88-S-1479

APPLICATION FOR A STAY OF EXECUTION

FEDERAL PUBLIC DEFENDER
MIDDLE DIST. OF TENNESSEE
CAPITAL HABEAS UNIT

KELLEY J. HENRY
Chief, Capital Habeas Unit

AMY D. HARWELL
First Asst. Federal Pub. Defender
Asst. Chief, Capital Habeas Unit

MARSHALL JENSEN
Asst. Federal Public Defender

810 Broadway, Suite 200
Nashville, TN 37203
Phone: (615) 736-5047
Fax: (615) 736-5265

Email: Kelley_Henry@fd.org

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INTRODUCTION

Pursuant to Tennessee Supreme Court Rule 12(4)(E), Mr. Black respectfully moves this Court for a stay of execution.

ARGUMENT

I. Applicable Law

Tennessee Supreme Court Rule 12(4)(E) sets forth the operative standard for a stay of execution. It provides that this Court "will not grant a stay or delay of an execution date pending resolution of collateral litigation in state court unless the prisoner can provide a likelihood of success on the merits in that litigation." Tenn. S. Ct. R. 12(4)(E). Unlike the preliminary injunction standard, Tennessee Supreme Court Rule 12(4)(E) does not use the modifier of "strong" to describe the movant's burden to demonstrate likelihood of success on the merits. *See Nken v. Holder*, 556 U.S. 418, 434 (2009). Thus, Mr. Black's burden is less than that of preliminary injunction and instead in entitled to a stay based on a showing "'more than a mere possibility of success.'" *State v. Irick*, 556 S.W.3d 686, 689 (Tenn. 2018) (quoting *Six Clinics Holding Corp. II v. Cafcomp Sys.*, 119 F.3d 393, 402 (6th Cir. 1997)).

A stay of execution is a form of equitable relief and, as such, "[i]t is not available as a matter of right." *Hill v. McDonough*, 547 U.S. 573, 584 (2006). Rather, the movant must show "that the balance of equities tips in his favor." *Ramirez v. Collier*, 595 U.S. 411, 421 (2022).

A. Mr. Black has shown a likelihood of success on the merits.

Mr. Black's brief in this case has shown a likelihood of success on the merits. Mr. Black is intellectually disabled, has brain damage and

dementia, and has been determined by experts to be incapable of living independently. As his accompanying brief outlines, at common law, an "idiot" was an individual with low intellectual functioning, who had unsound memory, was incapable of managing his own affairs, and had evidence of brain malformations. Mr. Black satisfies each of these criteria. Mr. Black has recounted the evolution of the common law and demonstrated that he meets the criteria for "idiocy" at common law. Because the governing law of *Ford v. Wainwright*, 477 U.S. 399 (1986) and *Van Tran v. State*, 6 S.W.3d 257 (Tenn. 1999) expressly incorporate the common law and because Mr. Black has shown that the original meaning of the Eighth Amendment encompasses a claim of "idiocy," he has shown he is entitled to relief.

For its part, the State has chosen to not engage with the substance of Mr. Black's argument. Dismissing the common law as "novel legal theories," it has adopted a nothing-to-see-here approach. By failing to engage with the well-established Eighth Amendment jurisprudence recognizing and protecting common law rights, the State relied exclusively on the dubious application of procedural rules, claiming that Mr. Black's exemption should have been asserted at an earlier time. The State's argument is unavailing because, as *Ford* and *Van Tran* make clear, a competency claim is only ripe once execution is imminent. *Ford*, 477 U.S. at 429 (O'Connor, J., concurring); *Van Tran*, 6 S.W.3d at 263.

Mr. Black has made a prima facie showing that he would be found incompetent at common law. The State has not rebutted this argument. Under these circumstances, Mr. Black has shown a strong likelihood of success on the merits, let alone more than a mere possibility of success.

Fisher v. Hargett, 604 S.W.3d 381, 394 (Tenn. 2020) (noting likelihood of success on the merits "often is the determinative factor").

B. Equitable considerations weigh in favor of Mr. Black.

Moreover, Mr. Black is entitled to a stay of execution because the equities of the case tip in his favor. Here, the interests of the State are outweighed by the equities of this case, where Mr. Black's case presents a likelihood of success on the merits, grievous risk of executing an individual in violation of the Constitution, and where Mr. Black has not delayed in bringing his claim.

Mr. Black will plainly suffer irreparable harm unless this Court stays his execution. Absent a stay, Mr. Black will be unlawfully executed and, as the Supreme Court has made clear, an "execution is the most irremediable and unfathomable of penalties." *Ford*, 477 U.S. at 411; *Van Tran v. State*, 66 S.W.3d 790, 809 (Tenn. 2001) ("[A] sentence of death is final, irrevocable, and 'qualitatively different' than any other form or level of punishment.").

When assessing the traditional equitable factors of the harm to the opposing party and the public interest, "[t]hese factors merge when the Government is the opposing party." *Nken*, 556 U.S. at 435. Undoubtedly, the State of Tennessee has an interest in ensuring that judgments are enforced. *Hill*, 547 U.S. at 584. That interest, however, is predicated on the notion that the enforcement of such a judgment would be lawful.

Here, Mr. Black has shown that his execution would violate the Eighth Amendment. The State has no interest in seeing that an unconstitutional sentence is carried out. *See Payne v. State*, 493 S.W.3d

478, 486 (Tenn. 2016) ("We reiterate our commitment 'to the principle that Tennessee has no business executing persons who are intellectually disabled.'" (quoting *Keen v. State*, 398 S.W.3d 594, 613 (Tenn. 2012))). The common law prohibition on executing the incompetent has "no less logical, moral, and practical force at present. Whether the aim is to protect the condemned from fear and pain without comfort of understanding, or to protect the dignity of society itself from the barbarity of exacting mindless vengeance, the restriction finds enforcement in the Eighth Amendment." *Ford*, 477 U.S. at 400. As, Mr. Black's argument "bears impressive historical credentials," ones that are no less relevant today than they were in the time of Lord Coke or Blackstone. *Id.* at 406. In light of that, the public interest is not served by the execution of a man that would have constituted "'a miserable spectacle'" at common law. *Id.* at 407 (quoting Edward Coke, 3 *Institutes of Laws of England* 6 (1680)).

Finally, Mr. Black has not acted with undue delay. Mr. Black moves for a stay over six weeks prior to his execution. This is not a last-minute action. Mr. Black's competency claim was not ripe until execution was imminent and such a claim could not have been brought at an earlier juncture. *Van Tran*, 6 S.W.3d at 263. Mr. Black has met the rigorous timeline provided under *Van Tran* and provided this Court with this application for a stay of execution concurrently with his appellate brief. Under this Court's jurisprudence, Mr. Black could not have brought a ripe claim at an earlier juncture. *See Dunn v. Ray*, 586 U.S. 1138, 1138

(2019) (noting that brought at the "last-minute nature" of a stay application may weigh against granting a stay).

This case raises significant questions of law regarding the scope of relief available under *Ford*, *Van Tran*, and their progeny. Furthermore, the case involves fundamental issues of constitutional interpretation, including the extent to which history and tradition must animate the meaning of the Eighth Amendment. These weighty issues are ill-suited for the truncated and rapid timeline envisioned by *Van Tran*. In this instance, the courts must not only adjudicate the case but must also clarify the governing standard. Accurate results require an in-depth review of founding era sources. In spite of the formidable origins of Mr. Black's claims, sparse model caselaw addresses this form of incompetency. Operationalizing these common law principles and defining the appropriate historical analogues is a laborious task, one's whose consequences are severe in this instance. Permitting the full development of the evidentiary record, thoughtful analysis of the common law claims, and wise attention to the guidance this Court can provide, all counsel in favor of a remand and a stay of execution. The public interest is served by thoughtful and thorough evaluation of these weighty issues involving core constitutional rights.

CONCLUSION

Wherefore, Mr. Black respectfully moves for a stay of execution.

Respectfully submitted this the 23rd day of June, 2025.

Kelley J. Henry, BPR #021113
Chief, Capital Habeas Unit

Amy D. Harwell, BPR #18691
First Asst. Fed. Pub. Defender
Asst. Chief, Capital Habeas Unit

Marshall Jensen, BPR # 36062
Asst. Federal Public Defender
FEDERAL PUBLIC DEFENDER
MIDDLE DISTRICT OF
TENNESSEE
810 Broadway, Suite 200
Nashville, TN 37203
Phone: (615) 736-5047
Fax: (615) 736-5265
Email: Kelley_Henry@fd.org

BY: _____
Counsel for Byron Black

CERTIFICATE OF SERVICE

I, Kelley J. Henry, certify that on June 23, 2025, a true and correct copy of the foregoing was served via email and United States Mail to opposing counsel, Raymond Lepone, Alan Grove, G. Kirby May, and Sarah Stone, Asst. Attorneys General, P.O. Box 20207, Nashville, Tennessee 37202.

BY: _____
Counsel for Byron Black