

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

2013 DEC 18 PM 3: 23

APPELLATE COURT CLERK
NASHVILLE

STATE OF TENNESSEE,

Movant,

v.

DONALD WAYNE STROUTH,

Defendant.

E1997-00348-SC-DDT-DD
Original Appeal No. 13
Sullivan Criminal
(Nos. 12,548-K and 12,572-BL)

MOTION TO SET EXECUTION DATE

Pursuant to Rule 12.4(A), Rules of the Supreme Court of Tennessee, the State of Tennessee respectfully requests that the Court set an execution date for Donald Wayne Strouth. In support of this motion, the State relies on the following:

1. Strouth was convicted by a Sullivan County jury in 1978 of the first-degree felony murder of 70-year-old James Keegan and was sentenced to death. This Court affirmed the judgment, and the United States Supreme Court denied a petition for writ of certiorari. *State v. Strouth*, 620 S.W.2d 467 (Tenn. 1981), *cert. denied*, 455 U.S. 983 (1982).

2. In 1982, Strouth filed his first petition for post-conviction relief in the trial court. Following an evidentiary hearing, the court denied relief. The Court of Criminal Appeals affirmed the judgment on appeal. *State v. Strouth*, 755 S.W.2d 819

(Tenn. Crim. App. 1986), *perm. app. denied* (Tenn. June 22, 1987). In 1993, Strouth filed a second post-conviction petition following this Court's decision in *State v. Middlebrooks*, 840 S.W.2d 317 (Tenn. 1992). The trial court again denied relief following an evidentiary hearing, and the Court of Criminal Appeals affirmed. *Strouth v. State*, No. 03C01-95-7-CC-00195, 1997 WL 90636 (Tenn. Crim. App. Mar. 4, 1997). This Court granted review and affirmed the judgment of the Court of Criminal Appeals. *Strouth v. State*, 999 S.W.2d 759 (Tenn. 1999). The United States Supreme Court denied a petition for writ of certiorari. *Strouth v. Tennessee*, 529 U.S. 1027 (2000).

3. Strouth filed a petition for writ of habeas corpus in the United States District Court for the Middle District of Tennessee in September 2000. On February 4, 2008, the district court granted judgment in favor of the warden and dismissed the petition. The United States Court of Appeals for the Sixth Circuit affirmed the district court's judgment on May 23, 2012. *Strouth v. Colson*, 680 F.3d 596 (6th Cir. 2012) (reh. denied July 12, 2012). The United States Supreme Court denied a petition for writ of certiorari on October 7, 2013, and denied a petition for rehearing on December 2, 2013. *Strouth v. Colson*, 134 S.Ct. 51 (2013) (reh. denied Dec. 2, 2013).

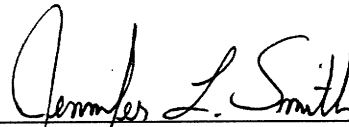
4. Strouth has completed the standard three-tier appeals process, making the setting of an execution date appropriate. *See* Rule 12.4(A).

For the reasons stated, an execution date should be set.

Respectfully submitted,



ROBERT E. COOPER, JR.
Attorney General & Reporter



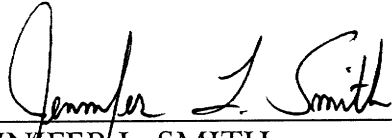
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¹ Counsel prefers to be notified of any orders or opinions of the Court by email at Jennifer.Smith@ag.tn.gov.

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Motion has been forwarded via facsimile and U.S. mail, first-class postage prepaid, on this the 18th day of December 2013 to:

Henry A. Martin
Kelley J. Henry
Office of the Federal Public Defender
810 Broadway, Suite 200
Nashville, TN 37203.



JENNIFER L. SMITH
Deputy Attorney General