

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

2013 OCT -3 PM 12:29

APPELLATE COURT CLERK
NASHVILLE

IN RE: DAVID EARL MILLER

) KNOX COUNTY
) ORIGINAL APPEAL
) No. 181

E1982-00075-SC-MWR-DD

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 David Earl Miller. In support of this motion, the State relies on the following:

1. Miller was convicted by a Knox County jury in 1982 of the first-degree murder of Lee Standifer and was sentenced to death. This Court affirmed the conviction but reversed the death sentence and remanded for a new sentencing after concluding that the jury considered inadmissible evidence during sentencing. *State v. Miller*, 674 S.W.2d 279, 284 (Tenn. 1984). Following a resentencing hearing in February 1987, the jury again sentenced Miller to death. This Court affirmed the judgment and the United States Supreme Court denied a petition for writ of certiorari. *State v. Miller*, 771 S.W.2d 401 (Tenn. 1989), *cert. denied*, 497 U.S. 1031 (1990).

2. In 1995, Miller sought post-conviction relief in the trial court, which conducted a hearing and denied relief. The judgment was affirmed in *Miller v. State*,

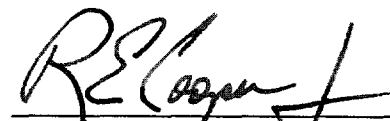
No. 03C01-9805-CR-00188, 1999 WL 1046415 (Tenn. Crim. App. Nov. 19, 1999) (app. granted Nov. 13, 2000). This Court affirmed the judgment in August 2001, and the United States Supreme Court denied a petition for writ of certiorari. *Miller v. State*, 54 S.W.3d 743 (Tenn. 2001), *cert. denied*, 536 U.S. 927 (2002).

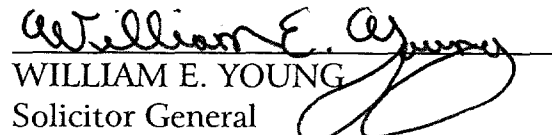
3. On May 17, 2002, petitioner filed a petition for writ of habeas corpus in the United States District Court for the Eastern District of Tennessee. On March 25, 2005, the district court granted summary judgment in favor of the warden and dismissed the petition. The United States Court of Appeals for the Sixth Circuit affirmed the district court's judgment. *Miller v. Colson*, 694 F.3d 691 (6th Cir. 2012), *cert. denied*, 133 S.Ct. 2739, 2013 WL 1221620 (2013). Miller did not seek rehearing of the order denying certiorari.

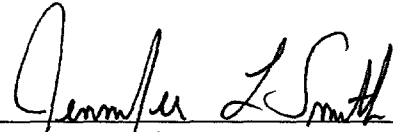
4. Miller has completed the standard three-tier appeals process, making the setting of an execution date appropriate. *See* Rule 12.4(A).

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

Respectfully submitted,


ROBERT E. COOPER, JR.
Attorney General & Reporter


WILLIAM E. YOUNG
Solicitor General



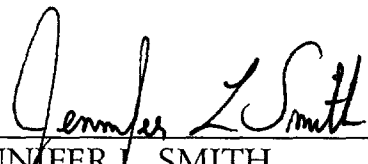
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¹ Counsel prefers to be notified of any orders or opinions of the Court by email at Jennifer.Smith@ag.tn.gov.

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 the 3rd day of October, 2013 to:

Stephen Kissinger
Federal Public Defender Services
800 S. Gay St, Suite 2400
Knoxville, TN 37929



JENNIFER L. SMITH
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