

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

**ABU-ALI ABDUR'RAHMAN (formerly known as James Lee Jones, Jr.)
v. STATE OF TENNESSEE**

No. M1988-00026-SC-DPE-PD

Filed by Clerk's Office January 15, 2002 (jsr)

ORDER

On December 3, 2001, the State filed a motion requesting that this Court set an execution date for James Lee Jones a/k/a Abu-Ali Abdur'Rahman asserting that Jones has completed the standard three-tier appeals process. Thereafter, Jones filed a response to the State's motion to set an execution date. In addition, Jones filed a "Motion for Style to Reflect Legal Name of Party," a "Motion for Certificate of Commutation Pursuant to S.Ct.R. 12.4 and T.C.A. § 40-27-106, and for Other Relief Pursuant to S.Ct.R. 11," a "Notice of Putative Ford Claim and Motion to Modify Van Tran Proceeding," and a "Motion for Appointment of Counsel." The State responded to these pleadings, and thereafter Jones filed a supplemental response.

I. Motion for Style to Reflect Legal Name of Party

Upon due consideration, the Court finds that the prisoner's motion is well-taken. Attached to the motion is a certified copy of an order entered on July 15, 1988, reflecting the prisoner's official name change from James Lee Jones, Jr., to Abu-Ali Abdur'Rahman. Accordingly, the motion is GRANTED, and all future court proceedings should reflect the official name change of the prisoner.

**II. Motion for Certificate of Commutation Pursuant to S.Ct.R. 12.4
and T.C.A. § 40-27-106, and for Other Relief Pursuant to S.Ct.R. 11**

Mr. Abdur'Rahman contends that he is entitled to a certificate of commutation because (1) prosecutorial misconduct deprived him of a fair trial and (2) his trial and post-conviction counsel were ineffective. Mr. Abdur'Rahman also contends that this Court has inherent authority under Tennessee Supreme Court Rule 11 to sanction the prosecutorial misconduct in his case by setting aside his sentence of death. Upon due consideration, the motion is DENIED. There is no basis for issuing a certificate of commutation. See Workman v. State, 22 S.W.3d 807 (Tenn. 2000). Furthermore, Tennessee Supreme Court Rule 11 does not confer upon this Court the authority to grant the relief requested by the prisoner.

III. Notice of Putative Ford Claim and Motion to Modify Van Tran Proceeding

Mr. Abdur'Rahman acknowledges that "at this point in time, he cannot establish that he is incompetent to be executed" but purports to place "this Court on notice that there exists a probability that at or near the date and/or hour of his yet-to-be scheduled execution he will be incompetent." He admits that he is not entitled to a remand and hearing under Van Tran v. State, 6 S.W.3d 257 (Tenn. 1999), but asks this Court to modify the procedure set out in Van Tran by ordering the Warden of the Riverbend Maximum Security Institution to allow him access to mental health professionals at all times prior to his execution. In addition, he asks that this Court afford him a hearing should he become incompetent for execution at any time.

Allegations of future incompetency are insufficient to delay an execution date. See Coe v. State, 17 S.W.3d 193, 221 n.15 (Tenn. 2000); see also Coe v. Bell, 209 F.3d 815, 824 (6th Cir. 2000). Should a substantial change in the prisoner's competency occur, counsel may file with this Court an affidavit specifically alleging facts establishing a claim of incompetency. Unless and until such an affidavit is filed, the prisoner's request for an order allowing him access to mental health professionals is premature, as is any decision by this Court affording the prisoner a hearing on the issue of his competency to be executed. Accordingly, the relief requested in the "Notice of Putative Ford Claim and Motion to Modify Van Tran Proceeding" is DENIED.

IV. Motion for Appointment of Counsel

Attorneys William P. Redick, Jr., and Bradley A. MacLean allege that they have been counsel of record for Mr. Abdur'Rahman in prior federal proceedings since 1996 and request that this Court appoint both of them as counsel of record in this cause of action. Upon due consideration, the motion is GRANTED.

V. Motion to Set Execution Date

The Court finds that Mr. Abdur'Rahman has presented no legal basis for denying the State's motion to set an execution date. Therefore, the State's motion is GRANTED. It is hereby ORDERED, ADJUDGED and DECREED by this Court that the Warden of the Riverbend Maximum Security Institution, or his designee, shall execute the sentence of death as provided by law on the 10th day of April, 2002, unless otherwise ordered by this Court or other appropriate authority. Counsel for Abu-Ali Abdur'Rahman shall provide a copy of any order staying execution of this order to the Office of the Clerk of the Appellate Court in Nashville. The Clerk shall

expeditiously furnish a copy of any order of stay to the Warden of the Riverbend Maximum Security Institution.

FOR THE COURT:

Frank F. Drowota, III, Chief Justice

Concurring:

E. Riley Anderson, Janice M. Holder, and William M. Barker, JJ.

Dissenting:

Adolpho A. Birch, Jr., J. - See Separate Order