IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

IN RE: STEVE HENLEY) JACKSON COUN	TY
) ORIGINAL APPE	AL
) No. 87-73-I	

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 Steve Henley. In support of this motion, the State relies on the following:

- 1. Henley was convicted by a Jackson County Criminal Court jury in 1986 of the first-degree murders of Fred and Edna Stafford. He was sentenced to death for the murders. This Court affirmed the judgment, *State v. Henley*, 774 S.W.2d 908 (Tenn. 1989), and the United States Supreme Court denied a petition for a writ of certiorari. *Henley v. Tennessee*, 497 U.S. 1031 (1990).
- 2. Henley subsequently sought post-conviction relief in the trial court, which conducted a hearing, made findings, and denied relief. The Tennessee Court of Criminal Appeals reversed, finding that Henley's counsel was ineffective during sentencing. *Henley v. State*, No. 01C01-9506-CC-00193, 1996 WL 234075 (Tenn. Crim. App., May 9, 1996. However, this Court reversed and reinstated the judgment of the

trial court after concluding the Court of Criminal Appeals erred in finding that Henley was prejudiced by counsel's performance at sentencing. *Henley v. State*, 960 S.W.2d 572 (Tenn. 1997), *cert. denied*, 525 U.S. 830 (1998).

- 3. In July 1998, Henley filed a petition for a writ of habeas corpus in the United States District Court for the Western District of Tennessee. On April 1, 2003, the district court entered a memorandum opinion and order granting the State's motion for summary judgment and dismissing the petition. The United States Court of Appeals for the Sixth Circuit affirmed the district court's judgment on May 15, 2007. *Henley v. Bell*, 487 F.3d 379 (6th Cir. 2007), *reh'g and sugg. for reh'g en banc denied* (Oct. 17, 2007). The United States Supreme Court denied a petition for a writ of certiorari on June 23, 2008, *Henley v. Bell*, 128 S.Ct. 2862 (No. 07-1194), and denied a petition for rehearing on August 18, 2008. (copy of order list attached)
- 4. Henley 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, a new execution date should be set.

Respectfully submitted,

ROBERT E. COOPER, JR.

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Motion has been forwarded via Facsimile and First-Class U.S. mail, postage prepaid on this the ______ day of September, 2008 to:

Paul S. Davidson Waller, Lansden, Dortch & Davis PLLC 511 Union Street Nashville, TN 37219 (615) 244-6380

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The undersigned attorney of record prefers to be notified of any orders or opinions of the Court by Facsimile at (615) 532-7791

IENNIFER L. SMITH

Associate Deputy Attorney General

(ORDER LIST: 554 U.S.)

MONDAY, AUGUST 18, 2008

ORDERS IN PENDING CASES

07-526	CARCIERI, GOV. OF RI, ET AL. V. KEMPTHORNE, SEC. OF INTERIOR
	The motion of Citizens Equal Rights Foundation, et al. for
	leave to file a brief as amici curiae out of time is granted.
07-562	ALTRIA GROUP, INC., ET AL. V. GOOD, STEPHANIE, ET AL.
07-665	PLEASANT GROVE CITY, UT, ET AL. V. SUMMUM
	The motions of the Acting Solicitor General for leave to
	participate in oral argument as amicus curiae and for divided
	argument are granted.
07 600	DARTIETT CARV ET AL V CTRICVIAND RUICUT ET AL

07-689 BARTLETT, GARY, ET AL. V. STRICKLAND, DWIGHT, ET AL.

The motion of National Association for the Advancement of Colored People, et al. for leave to file a brief as *amici* curiae out of time is granted.

07-751 PEARSON, CORDELL, ET AL. V. CALLAHAN, AFTON

The motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument is granted.

REHEARINGS DENIED

06-1666	MUNAF, MOHAMMAD, ET AL. V. GEREN, SEC. OF ARMY
07-394	GEREN, SEC. OF ARMY, ET AL. V. OMAR, SANDRA K., ET AL.
07-1117	THOMAS, ROBERT V. TRICO PRODUCTS CORP., ET AL.
07-1194	HENLEY, STEVE V. BELL, WARDEN
07-1198	SPLITTORFF, FRANCIS W. V. AIGNER, JERRY, ET AL.
07-1278	DAHLQUIST, DARYL V. VUKICH, PATRICK G.

- 07-1312 ROSA, BERNARD J. V. CALIFORNIA, ET AL.
- 07-1314 KIM. CYRUS Y. V. WA DEPT. OF LICENSING
- 07-1332 WARE, WILLIAM A., ET AL. V. FEDERAL HIGHWAY ADMIN., ET AL.
- 07-1373 GLENMONT HILLS ASSOC. V. MONTGOMERY COUNTY, MD
- 07-7834 TERRY, GARY I., ET AL. V. UNITED STATES
- 07-9673 SIMEONE, MICHAEL D. V. DiGUGLIELMO, SUPT., GRATERFORD
- 07-9778 LANG, DANIEL J. V. HAMLET, WARDEN
- 07-9990 WILMS, CHESTER L. V. FINNAN, SUPT., WABASH VALLEY
- 07-10019 GUINN, GENE A. V. QUARTERMAN, DIR., TX DCJ
- 07-10054 WISE, GARY L. V. USDC SC
- 07-10122 CALDWELL, ROBERT V. QUARTERMAN, DIR., TX DCJ
- 07-10156 PARADISE, BOBBY V. GEORGIA
- 07-10187 BRIGHT, WINFRED R. V. WRIGHT, WARDEN
- 07-10203 SHANKLIN, GEORGE V. ORTIZ, EXEC. DIR., CO DOC
- 07-10205 SMITH, CALVIN L. V. VIRGINIA
- 07-10211 ZHANG, ZHENLU V. SCIENCE & TECH. CORP., ET AL.
- 07-10247 CALLIGAN, EDWIN D. V. WILSON, SUPT., WESTVILLE
- 07-10306 COMIER, LEE V. SCHRIRO, DIR., AZ DOC
- 07-10361 VANDERWALL, ROBIN W. V. VIRGINIA
- 07-10407 CORNET, STANLEY V. FLORIDA
- 07-10425 GIBBS, ARSON I. V. MINNER, GOV. OF DE, ET AL.
- 07-10451 DUNLAP, TIMOTHY A. V. GREEN, JAY, ET AL.
- 07-10455 McCREARY, CARNELL V. BIRKETT, WARDEN, ET AL.
- 07-10575 TAVAREZ, TEOFILO V. MARSHALL, SUPT., SING SING
- 07-10783 SCHILS, MICHAEL V. WASHTENAW COMMUNITY HEALTH
- 07-10870 YORK, JAMES O. V. SOUTH CAROLINA, ET AL.
- 07-10922 MANNING, GWENESTHER F. V. POTTER, POSTMASTER GEN.

The petitions for rehearing are denied.