

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

**IN RE: GREGORY THOMPSON) COFFEE COUNTY
) ORIGINAL APPEAL NO.
) M1987-00027-SC-MWR-DD
) Filed February 9, 2004**

**REPLY OF THE STATE OF TENNESSEE TO THOMPSON’S
“RESPONSE OPPOSING MOTION TO SET EXECUTION DATE
AND REQUEST FOR A CERTIFICATE OF COMMUTATION”**

Gregory Thompson opposes the State’s motion to set an execution date on grounds that he is mentally ill, citing a history of mental health treatment since entering the custody of the Tennessee Department of Correction and the fact that, in March of 2001, the Department sought to have a conservator appointed for the limited purpose of providing consent for Thompson “to receive medical and psychiatric treatment, including the forcible administration of medications if the conservator finds that such is necessary.” Thompson requests, in addition, that this Court issue a certification of commutation pursuant to Tenn. Code Ann. § 40-27-106. Neither of Thompson’s requests are justified under the circumstances of the case.

In *Workman v. State*, 22 S.W.3d 807 (Tenn. 2000), the Court instructed that, where a prisoner has exhausted all judicial remedies and the conviction and sentence are final as a matter of law, there is no legal basis why an execution date should not be set. Here, as outlined in the State’s motion to set execution date, Thompson has completed the standard three-tier appellate review process as set forth in Tenn. Sup. Ct. R. 12.4. His conviction and death sentence for the first-degree murder of

Brenda Blanton Lane¹ were affirmed on direct appeal, state post-conviction, and by the United States Court of Appeals for the Sixth Circuit on federal habeas review. *State v. Thompson*, 768 S.W.2d 239 (Tenn. 1989); *Thompson v. State*, 958 S.W.2d 156 (Tenn. Crim. App. 1997) (app. denied Oct. 20, 1997). Thompson presents no legitimate basis upon which to delay or deny the State’s motion to set an execution date, as there exists “no procedure, no method, and no means by which the conviction and sentence can be further tested or scrutinized under the procedural guidelines” of this Court. *Workman*, 22 S.W.3d at 809. Having successfully defended Thompson’s conviction and sentence through more than 18 years of appeal, the State is entitled to carry out the lawful judgment of the Coffee County Circuit Court and asks that the Court set an execution date on the earliest possible date.²

Likewise, Thompson has presented no extenuating circumstances warranting the issuance of a certificate of commutation. The power to commute a death sentence is constitutionally vested in the Governor. Art. III, § 6, Tenn. Const. However, Tenn. Code Ann. § 40-27-106 provides that the Governor may commute a death sentence to life imprisonment upon the certificate of the

¹On New Year’s Day 1985, Thompson and a juvenile accomplice abducted Brenda Lane at knife point from the parking lot of a Shelbyville Wal-Mart and forced her to drive to a remote location outside Manchester. There, Thompson stabbed Lane multiple times in the back and left her alone to die. Thompson’s only motive for the murder was to obtain Lane’s car. *State v. Thompson*, 768 S.W.2d 239 (Tenn. 1989). At the time of her death, 28-year-old Brenda Lane was married and a budding journalist, having worked as a reporter and columnist for the Shelbyville *Times-Gazette* and, later, for United Methodist Communications in Nashville. In 1982, Lane was named the “Outstanding Young Woman of Bedford County.” *State v. Thompson*, No. M1987-00027-SC-MWR-DD , T.E., Vol. 13, pp. 41-44 (original appellate record).

²Tenn. Sup. Ct. R. 12.4(E) provides that the Court “shall set the date of execution no less than thirty (30) days from the date of the order granting the State’s motion.” The State is aware, however, that Thompson has filed a notice of incompetency to be executed, requesting a remand for proceedings under *Van Tran v. State*, 6 S.W.3d 257 (Tenn. 1999) (providing no more than 55 calendar days for the conclusion of the trial court proceedings and the filing of an appeal in this Court). Should the Court order a remand for competency proceedings, the State submits that three months is an appropriate time frame for an execution date. *See, e.g., State v. Coe*, No. M1999-01313-SC-DPE-PD (execution date set approximately three months after order setting date and remanding for competency proceedings).

Supreme Court that “there are extenuating circumstances attending the case, and that the punishment ought to be commuted.”³ On the issue of recommending commutation, this Court will consider only facts contained in the record or a combination of record facts and new evidence that is uncontroverted. Because the Court exercises appellate jurisdiction only, relief is not appropriate under § 40-27-106 based upon contested extra-judicial facts challenging the accuracy of the jury’s verdict and/or the credibility of the evidence upon which a conviction is based. *Workman*, 22 S.W.3d at 808-09.

Thompson’s submissions to this Court, consisting of excerpts from mental health records dating from 1985 and selected filings in his conservatorship proceedings in the Davidson County Probate Court, provide no extenuating circumstances warranting the issuance of a certificate of commutation. First, contrary to Thompson’s contention, the nature and extent, and even the diagnoses, of Thompson’s mental condition have been matters of controversy at every stage of his appeal and in more than one collateral proceeding. *See, e.g., Thompson v. Bell*, No. M2001-02460-CCA-OT-CO, 2002 WL 1885260, *1 (Tenn. Crim. App. Aug. 15, 2002) (app. denied Dec. 23, 2002) (on appeal from denial of petition for writ of error coram nobis, Court of Criminal Appeals observed that, “[d]uring [Thompson’s] trial and post-conviction proceedings, the State contested all assertions by Appellant that his mental condition was a valid defense to the crime for which he was charged, and/or that his mental condition was a debilitating factor as to the sentencing”). Thompson’s current petition is yet another attempt to impeach the jury’s verdict with extra-judicial facts. Indeed,

³At least one member of this Court has opined that, given the extensive appellate review process for capital cases, including this Court’s proportionality review on direct appeal, Tennessee’s statutory provision for certificates of commutation has largely become obsolete and may be constitutionally suspect under the doctrine of separation of powers. *Workman*, 22 S.W.3d at 813-16 (Barker, J., concurring); *see also* 22 S.W.3d at 813 (Drowota, J., concurring) (“executive clemency decisions are outside the domain of the courts”).

Thompson's argument in support of a certification of commutation here is virtually identical to the one advanced in support of a petition for writ of error coram nobis. In rejecting his appeal in that case, the Court of Criminal Appeals observed:

The crux of Appellant's petition is that he should be granted a hearing because the State of Tennessee, throughout the trial proceedings and direct appeals thereof, and throughout the post-conviction proceedings, successfully argued that Appellant did not have a mental illness which would constitute a defense to the crime or a mitigating factor for sentencing. Appellant argues that the State now concedes that Appellant has a mental illness. The only conclusion that can be logically drawn from the conservatorship petition, however, is that the State Attorney General, representing the Department of Correction, asserts that Appellant was in need of a conservator for the limited purpose of giving consent to medical and psychiatric treatment in March of 2001. This does not constitute "newly discovered evidence" within the parameters for relief provided by the writ of error coram nobis.

Thompson, 2002 WL 1885360, at *3.

Thompson's reliance on his conservatorship proceedings to support issuance of a certificate of commutation is likewise unavailing, if not a bit curious, particularly given the fact that Thompson's current counsel successfully petitioned the Davidson County Probate Court to terminate the conservatorship less than six months ago. In the Order terminating Thompson's conservatorship, the Probate Court, Judge Frank G. Clement, Jr., presiding, found that Thompson has some insight into his mental illness, that he voluntarily takes his medication, and that he is not in need of the protection, supervision or assistance of a conservator. *See* Response Opposing Motion to Set Execution Date and Request for a Certificate of Commutation, Exh. 9, pp. 1-2.⁴

Although this Court has the discretion, pursuant to Tenn. Code Ann. § 40-27-106, to certify

⁴In addition to the written order terminating Thompson's conservatorship, the Judge Clement observed at the conclusion of the termination hearing: "[I]n the two plus years that Frank Freemon has been conservator — I'm extremely pleased that he was there, but he's basically been unnecessary, which is pretty compelling in itself. . . . I'm impressed with the fact that, as Mr. Freemon indicated today, they hand him [Thompson] his meds . . . and he takes them voluntarily. With that in mind, I believe the conservator is unnecessary." Response Opposing Motion to Set Execution Date and Request for a Certification of Commutation, Exh. 9, pp. 172-75.

to the Governor that Thompson's punishment ought to be commuted, Thompson has failed to demonstrate extenuating circumstances sufficient to trigger the exercise of the Court's discretion under the statute. On direct appeal, this Court determined that the sentence of death imposed by the jury in Thompson's case "was neither arbitrary nor excessive or disproportionate to the penalty imposed in similar cases, considering both the nature of the crime and the defendant." *Thompson*, 768 S.W.2d at 253. The nature and extent of Thompson's mental illness has been controverted at every stage of appeal arising out of his conviction and sentence, and, at every stage, reviewing courts have upheld the jury's verdict. Thompson has presented this Court with no new evidence that is uncontroverted so as to justify a certificate of commutation.

For these reasons, this Court should deny Thompson's request for a certificate of commutation and set his execution for the earliest possible date.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Response has been forwarded via Facsimile and First-Class U.S. mail, postage prepaid, on this the _____ day of February, 2004, to:

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