

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

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STATE OF TENNESSEE)
)
vs.) No. M1987-00072-SC-DPE-DD
)
DONNIE JOHNSON)

APPELLATE COURT CLERK
NASHVILLE

MOTION TO VACATE EXECUTION DATE

Donnie Johnson respectfully moves this Court to vacate a March 24, 2015 execution date, just as this Court has recently vacated pending execution dates in the cases of Billy Ray Irick, Edmund Zagorski, and Stephen West. In support of this motion, Donnie Johnson states:

1. Along with Irick, Zagorski, and West, Donnie Johnson is a plaintiff in a pending chancery court lawsuit challenging Tennessee's method of execution. *West, et. al. v. Schofield, et. al.*, No. 13-1627-I (In the Chancery Court for the Twentieth Judicial District, Nashville and Davidson County, Tennessee).

2. This Court has granted an interlocutory appeal in West v. Schofield, No. M2014-00320-SC-R11-CV to address interlocutory discovery issues.

3. Both before and after this Court granted permission to appeal in *West*, this Court vacated pending execution dates, to allow the appellate courts to resolve the pending issues in *West*, and/or for the chancery court to resolve the case on remand. See e.g., State v. Irick, No. M1987-00131-SC-DPE-DD (Tenn. Sept. 25, 2014); State v. Zagorski, No. M1996-00110-SC-DPE-DD (Tenn. Oct. 22, 2014); State v. West, No. M1987-00130-SC-DPE-DD (Tenn. Nov. 26, 2014).

4. Most recently, in both *West* and *Zagorski*, the state has not opposed the

vacation of an execution date, pending this Court's disposition of the interlocutory appeal, where a new execution date may be set upon the disposition of the interlocutory appeal.

4. Given the pending appeal before this Court as well as the need for the parties for sufficient time to conduct discovery and then litigate the chancery court action to conclusion, this Court should vacate the execution date in Donnie Johnson's case, as the Court has done in *Irick*, *Zagorski*, and *West*.

Respectfully Submitted,


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BY: 
Kelley J. Henry

CERTIFICATE OF SERVICE

I verify that I have served a copy of the foregoing via email upon Jennifer Smith, Office of the Attorney General, 425 Fifth Avenue North, Nashville, Tennessee 37243 this 11th day of December, 2014.


Kelley J. Henry