

**IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE**

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APPELLATE COURT CLERK
NASHVILLE

STATE OF TENNESSEE,)
) No. E1997-00344-SC-DDT-DD
Appellant,)
) Criminal Court for
) Hamilton County
v.) Nos. 188000 & 188001
)
LEROY HALL, JR.)
)
Appellee.) CAPITAL CASE

**MOTION FOR EXTENSION OF TIME TO FILE RESPONSE
TO STATE’S MOTION TO SET EXECUTION DATE**

Mr. Lee Hall, by and through counsel, moves for an extension of time to file his response to the State’s Motion to Set Execution Date to up to and including July 18, 2014.

In support of this motion, Appellant states as follows:

1. On October 29, 2013, the Court appointed the Office of the Post-Conviction Defender to represent Mr. Hall and directed the Office to file an answer to the State’s motion by December 16, 2013.

2. Undersigned counsel Kelly Gleason, as the senior attorney in the Office and the only attorney with experience in representing clients in late-stage litigation in Tennessee, was immediately assigned to the case. Ms. Gleason is sole counsel on the case, assisted by a law clerk and paralegal. The Office is unable to assign another attorney to Mr. Hall’s case because post-conviction trial courts have

chosen to schedule three of the office's current pre-hearing post-conviction cases back to back in March-May 2014 and our staff is attempting to prepare for those hearings. In addition, the attorneys are responsible for a significant appellate caseload as well as preparation of other trial level cases which do not have hearing dates scheduled. Ms. Gleason is assigned to two of the pre-hearing cases and also is currently drafting the Reply Brief in *Jerry Ray Davidson v. State* in this Court, due on December 13.

3. Counsel Gleason was not originally assigned to those two pre-hearing cases – *David Jordan v. State* (set for May 2014) and *Joel Schmeiderer v. State* (set for March 2014). After the office lost 5 of our 8 staff attorneys over an 8 month period last year, including all of the attorneys representing those clients, the cases needed to be reassigned. Ms. Gleason has immediate responsibilities to Mr. Schmeiderer and Mr. Jordan – to read the records in those cases, investigate, and prepare for the hearings. The preparation of those cases is already behind due to counsel Gleason's limited ability to get up to speed while continuing to represent other clients with previously scheduled deadlines. The other pending pre-hearing case is *Richard Odom v. State* (set for April 2014). Gleason's co-counsel in *Schmeiderer* is the Deputy Director of the Office, Debbie Drew, who will be acting Post-Conviction Defender in January and February while the Post-Conviction Defender Justyna Scalpone is on maternity leave. Ms. Drew is counsel in both *Schmeiderer* and *Odom*, attempting to prepare and try both of those cases within a

month of each other. Given Ms. Drew's schedule, it is critical that counsel Gleason be available to carry a significant portion of the work in *Schmeiderer*.

4. Unlike the other nine cases in which the State is seeking an execution date, undersigned counsel has no previous relationship with Mr. Hall and is unfamiliar with the record in his case. The Office is in the process of collecting pertinent records – the federal habeas proceedings, state post-conviction, state trial and direct appeal, TDOC, medical, and so on. Counsel has met with Mr. Hall and with his previous federal habeas counsel. Mr. Hall has asked counsel to raise any and all claims possible in support of the response to the State's motion to set an execution date. In order to do so, counsel Gleason will need to review at least 45,000 plus pages of documents.

5. Tenn. Sup.Ct. R. 12.4(A) directs that a response to a motion to set an execution date:

Shall assert any and all legal and/or factual grounds why the execution date should be delayed, why no execution date should be set, or why no execution should occur, including a claim that the prisoner is not competent to be executed, *see Coe v. State*, 17 S.W.3d 191 (Tenn. 2000); *Van Tran v. State*, 6 S.W.3d 257 (Tenn. 1999); or a request for a certificate of commutation pursuant to Tenn. Code Ann. § 40-27-106, *see Workman v. State*, 22 S.W.3d 807 (Tenn. 2000).

Counsel cannot assert "any and all legal and/or factual grounds" why Mr. Hall's execution should be delayed, not scheduled, or not occur unless counsel reads the records, consults with Mr. Hall, researches legal issues, and prepares to present all of those legal and factual grounds. Nor can counsel properly assert a request for a certificate of commutation in the absence of careful preparation and thought.

6. On September 27, 2013, the Tennessee Department of Correction adopted a new lethal injection protocol. Mr. Hall promptly started the process of challenging its legality by filing a grievance in order to exhaust any administrative remedies that he might arguably be required to pursue. Mr. Hall is currently a plaintiff in *Stephen West et. al. vs. Derrick Schofield et. al.* in Davidson Chancery Court Case No. 13-1627-I, a case challenging the new lethal injection protocol on multiple grounds. Mr. Hall filed his motion to intervene and complaint on November 21, 2013, and the Chancery Court granted the motion on that date. As this Court has held, examination of a new protocol requires deliberate judicial examination. *Cf. State v. West*, No. M1987-00013o-SC-DPE-DD (Tenn. Nov. 29, 2010) (ordering proceedings regarding new lethal injection protocol in lower courts). It would be premature to require Mr. Hall to respond to the State's motion to set an execution date until the constitutionality of the new protocol is adjudicated.¹

WHEREFORE, Mr. Hall respectfully moves the Court to enter an Order granting him up to, and including, July 18, 2014, to prepare a response to the State's motion to set an execution date.

¹ The time frame for the adjudication of the protocol is unknown. The extension of time requested in this motion is based on counsel's schedule, counsel's previous unfamiliarity with Mr. Hall and his case, and the magnitude of the work required to file a response to the State's motion for the Court to set an execution date – not the lethal injection litigation. Mr. Hall would oppose the setting of an execution date during the pendency of any lethal injection litigation.

Respectfully submitted,

Kelly A. Gleason

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Counsel for Lee Hall, (formerly known as
Leroy Hall, Jr.)

STATE OF TENNESSEE)
)
COUNTY OF DAVIDSON)

AFFIDAVIT

I, Kelly A. Gleason, after having been duly sworn, aver and say as follows:

1. The facts stated herein are true and accurate to the best of my knowledge.

FURTHER THE AFFIANT SAITH NOT.

Kelly A. Gleason

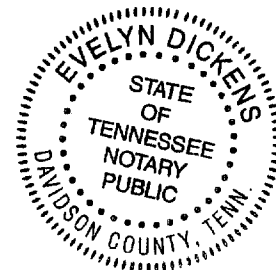
Kelly A. Gleason, Affiant

Sworn to and subscribed before me on this the 27th day of November, 2013.

Evelyn Dickens

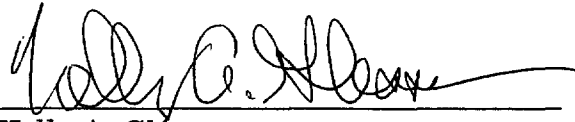
NOTARY PUBLIC

My Commission Expires: _____ My Commission Expires MAY 5, 2015



CERTIFICATE OF SERVICE

I hereby certify that an exact copy of the forgoing motion has been mailed via U.S. Mail, postage pre-paid, to the Office of the State Attorney General, Jennifer L. Smith, Deputy Attorney General, Criminal Justice Division, P.O. Box 20207, Nashville, Tennessee, 37202-0207, and emailed to Jennifer.Smith@ag.tn.gov on this the 27th day of November, 2013.



Kelly A. Gleason
Assistant Post-Conviction Defender