

IN THE SUPREME COURT OF TENNESSEE

FILED

AT NASHVILLE

2013 OCT -3 PM 12: 27

APPELLATE COURT CLERK  
NASHVILLE

STATE OF TENNESSEE,

)

Movant,

)

)

v.

)

No. M1987-00131-SC-DPE-DD

)

BILLY RAY IRICK,

)

)

Defendant.

)

)

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MOTION TO RESET EXECUTION DATE

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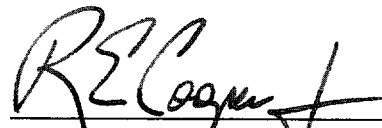
By order dated July 19, 2010, the defendant Irick having exhausted the standard three-tier appeals process, this Court set an execution date of December 7, 2010, in the above styled matter. Irick was subsequently permitted to intervene in a declaratory judgment action filed by another death-sentenced inmate, Stephen Michael West, challenging the constitutionality of Tennessee’s three-drug lethal injection protocol. On November 29, 2010, this Court stayed his execution during the pendency of any appeal of the trial court’s judgment in that action and “until the State files a motion to reset the execution date pursuant to Tennessee Supreme Court Rule 12.4.”

On April 11, 2012, the Court of Appeals concluded that the state's three-drug protocol, as revised in November 2010, satisfies the constitutional prohibition against cruel and unusual punishment. *West v. Schofield*, 380 S.W.3d 105 (Tenn. Ct. App. 2012) (app. denied Aug. 17, 2012). This Court denied discretionary review under Tenn. R. App. P. 11, and the United States Supreme Court denied a petition for writ of certiorari on April 15, 2013. *Irick v. Schofield*, 133 S.Ct. 1808 (2013).

The standard three-tier review process has long since concluded, and this Court's stay of execution dissolved by its terms with the conclusion of Irick's appeal of his lethal injection protocol challenge. There being no pending stay of execution or other legal or factual ground preventing the resetting of Irick's execution date, the State of Tennessee seeks a new execution date for Irick.

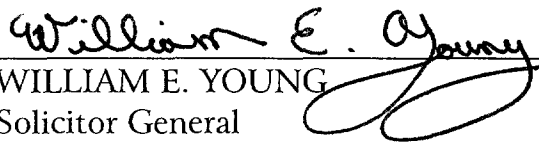
WHEREFORE, pursuant to Rule 12(4)(E), Rules of the Supreme Court of Tennessee, the State of Tennessee respectfully requests that this Court reset the date of execution for Irick to a date no less than seven (7) days from issuance of an order of this Court granting the State's motion.

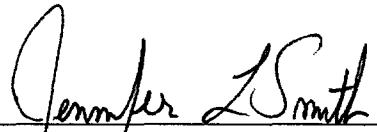
Respectfully submitted,



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ROBERT E. COOPER, JR.  
Attorney General & Reporter

  
WILLIAM E. YOUNG  
Solicitor General

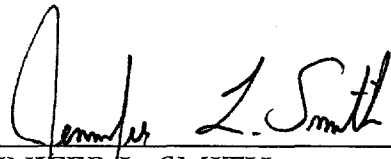
  
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<sup>1</sup> Counsel prefers to be notified of any orders or opinions of the Court by email at Jennifer.Smith@ag.tn.gov.

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Motion has been forwarded via facsimile and U.S. mail, first-class postage prepaid, on the 3<sup>rd</sup> day of October 2013 to: Howell G. Clements, Clements & Cross, 1010 Market Street, Suite 401, Chattanooga, TN 37402 and C. Eugene Shiles, Spears, Moore, Rebman, & Williams, P.O. Box 1749, Chattanooga, TN 37401.

A handwritten signature in black ink, appearing to read "Jennifer L. Smith". The signature is written in a cursive style with a large initial "J".

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JENNIFER L. SMITH  
Deputy Attorney General