

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

STATE OF TENNESSEE,)	
)	
)	DAVIDSON COUNTY
v.)	No. M2016-01869-SC-R11-PD
)	
)	CAPITAL CASE
OSCAR SMITH,)	Execution Date: June 4, 2020
)	
Defendant.)	

**RESPONSE OF THE STATE OF TENNESSEE IN OPPOSITION
TO THE MOTION FOR STAY OF EXECUTION**

On March 18, 2020, Oscar Smith (“Smith”) filed a motion to stay his execution based on the outbreak of the novel coronavirus disease COVID-19. (Motion, pgs. 1-3.) He points to the numbers of affected persons in both this State and abroad and alleges that the pandemic will affect his ability to seek clemency and pursue ongoing legal challenges. (Motion, pgs. 7-8.)

Under Tennessee Supreme Court Rule 12.4(E), this Court will not stay an execution pending resolution of collateral litigation in state court unless the prisoner can prove a likelihood of success on the merits in that litigation, which requires showing more than a mere possibility of success. *State v. Irick*, 556 S.W.3d 686, 689 (Tenn. 2018). Additionally, this Court “will not delay setting an execution date pending resolution of collateral litigation in federal court.” Tenn. Sup. Ct. R. 12.4(E).

Smith has not established entitlement to a stay under this standard. Smith vaguely claims that he has “ongoing legal challenges

and continues to explore other possible judicial remedies,” although he does not identify them. (Motion, pg. 7.) However, he does not specify which of these ongoing and unmeritorious collateral proceedings will be unconstitutionally affected by the “social distancing” recommendations of the Center for Disease Control.

Smith recently filed an “omnibus” request for relief with the Davidson County Criminal Court, which summarily dismissed the request. *See* Order Denying “Oscar Smith’s Omnibus Request For Relief On His Jury Claims”, *Smith v. State*, No. 89-F-1773 (Davidson Co. Crim. Ct. Mar. 10, 2020) (Dalton, J.). He has not appealed the dismissal of his request. Moreover, Smith fails to assert that he will appeal from the trial court’s summary dismissal of his omnibus request for relief or, if he intends to appeal, that the appeal will be successful on its merits. Thus, Smith has not demonstrated, as he must, that he is entitled to a stay because of this “ongoing” litigation.

Smith is also involved in ongoing 42 U.S.C. § 1983 litigation in the United States District Court for the Middle District of Tennessee. *See Smith et al. v. Parker et al.*, No. 3:19-cv-01138 (M.D. Tenn. Jan. 15, 2020) (transfer order) (Richardson, J.). But, as noted above, the pendency of collateral litigation in federal court is not a ground on which this Court will delay an execution. *See* Tenn. Sup. Ct. R. 12.4(E). Thus, the pendency of this “ongoing” federal litigation does not entitle Smith to a stay of execution.

Smith additionally claims that his clemency application will be affected by the coronavirus response in Tennessee.¹ (Motion, pg. 7.) But this Court has no role in clemency proceedings aside from determining whether to issue a certificate of commutation in appropriate cases. *See* Tenn. Code Ann. § 40-27-106; *see also State v. Workman*, 22 S.W.3d 807, 808 (Tenn. 2000). This Court refused to issue such a certificate when it set Smith’s execution date. *State v. Smith*, No. M2016-01869-SC-R11-PD (Tenn. Jan. 15, 2020) (order setting execution date) (per curiam).

Nevertheless, this Court is in the best position to determine whether a stay of execution should be granted in response to coronavirus-related issues affecting the courts of this State. The Court is clearly aware of the status of the novel coronavirus disease in Tennessee and its impact on the judicial system and, in response to health concerns triggered by the virus, has already issued an order suspending most in-person court proceedings through March 31, 2020. *In Re: Covid-19 Pandemic*, No. ADM2020-00428 (Tenn. Mar. 13, 2020).

¹ As Smith acknowledges, the Tennessee Department of Correction has not restricted access of legal counsel to their incarcerated clients in its response to the coronavirus threat. (Motion, pg. 6.)

CONCLUSION

Smith has not established entitlement to a stay of execution based on any “ongoing legal challenges.”

Respectfully submitted,

HERBERT SLATERY, III
Attorney General & Reporter

ANDRÉE SOPHIA BLUMSTEIN
Solicitor General

s/ Samantha L. Simpson
SAMANTHA L. SIMPSON
Assistant Attorney General
Criminal Appeals Division
P.O. Box 20207
Nashville, Tennessee 37202
(615) 532-4387
Samantha.Simpson@ag.tn.gov
B.P.R. No. 35321

CERTIFICATE OF COMPLIANCE

In accordance with Tenn. Sup. Ct. R. 46, § 3, Rule 3.02, the total number of words in this brief, exclusive of the Caption and this Certificate of Compliance, is 660. This word count is based upon the word processing system used to prepare this response.

s/ Samantha L. Simpson
SAMANTHA L. SIMPSON
Assistant Attorney General