

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

PAUL DENNIS REID, JR.,)	
By and through Linda Martiniano)	
as Next Friend,)	
)	MONTGOMERY COUNTY
Petitioner/Appellant,)	C.C.A. No.
)	M2006-01294-CCA-R3-PC
v.)	
)	
STATE OF TENNESSEE,)	
)	
Respondent/Appellee.)	

**RESPONSE OF THE STATE OF TENNESSEE
TO APPELLANT’S MOTION FOR EXPEDITED APPEAL**

On July 27, 2006, the appellant, Linda Martiniano, filed a motion for expedited appeal of the decision of the Montgomery County Circuit Court dismissing the petition for post-conviction relief and motion for appointment of counsel filed on behalf of Paul Dennis Reid, Jr.¹ On August 17, 2006, the Court directed that the State file a response within ten days from the date of the order. The State submits that the Court should grant an expedited appeal, although for different reasons than those stated in the appellant’s motion.²

After appellant was unsuccessful in her efforts to secure a stay of Reid’s June 28, 2006, execution in the state courts, she filed a petition for writ of habeas corpus and motion for stay of

¹The petition alleged Reid’s incompetency and, thus, was filed by his sister, Linda Martiniano, Assistant Post-Conviction Defender Kelly Gleason, and Connie Westfall, an investigator with the PCD’s office.

²Although counsel for the State initially related to appellant’s counsel that it would oppose the request for an expedited appeal, events subsequent to that communication, as set forth below, have resulted in a change in the State’s position.

execution on Reid's behalf in the United States District Court for the Middle District of Tennessee on June 26, 2006. At the conclusion of a three-hour hearing on June 27, 2006, the district court granted a stay of execution, concluding that sufficient evidence had been presented to raise a reasonable doubt about Reid's competence under *Kirkpatrick v. Bell*, No. 03-5526, 64 Fed. Appx. 495 (6th Cir. May 5, 2003), a decision related to a prior next friend application filed in 2003 by another of Reid's sisters, Janet Kirkpatrick, in connection with his Davidson County convictions.

The State appealed the district court's stay order, arguing that the district court applied an incorrect legal standard (and thereby abused its discretion) by granting equitable relief without giving consideration to the quality of the evidence presented and the last-minute nature of the stay application. *See Hill v. McDonough*, 126 S.Ct. 2096 (2006) (court considering a stay must apply "a strong presumption against the grant of a stay where a claim could have been brought at such a time as to allow consideration of the merits without requiring the entry of a stay"). The Sixth Circuit Court of Appeals and the United States Supreme Court denied the State's request to vacate the stay of execution, and the district court thereafter scheduled an evidentiary hearing for September 5, 2006, to determine whether Reid is competent to waive and/or forgo his appeals or, on the other hand, whether Linda Martiniano has standing to initiate habeas corpus proceedings on his behalf as next friend due to his incompetency under the standard announced in *Rees v. Peyton*, 384 U.S. 312, 314 (1966).

On August 24, 2006, the State withdrew its opposition to Martiniano's standing to proceed in federal habeas proceedings and urged the district court to deem the federal habeas petition

properly filed on Reid's behalf.³ The district court entered an order that same day authorizing Martiniano to represent Reid in federal habeas proceedings as "next friend." Because state prisoners are required to exhaust available state remedies before initiating federal habeas proceedings, this Court's determination as to the propriety of the circuit court's summary dismissal of Martiniano's "next friend" petition now directly bears upon the federal court proceedings. Until disposition of this appeal, it remains unclear whether Reid has exhausted his available state remedies under 28 U.S.C. § 2254(b)(1) ("An application for a writ of habeas corpus . . . shall not be granted unless it appears that . . . the applicant has exhausted the remedies available in the courts of the State.")⁴ This Court's decision also impacts calculation of the federal habeas statute of limitations under 28 U.S.C. § 2244(d)(2), which permits tolling of the one-year limitation period during the period in which a "properly filed State post-conviction or other collateral review . . . is pending."

This matter came before the federal district court as a result of the exigencies of Reid's imminent execution date. Now, with that event having been stayed, significant questions remain regarding the status of the proceedings in both state and federal courts. Expedited disposition of this appeal will resolve many of those questions and should determine in which forum the collateral

³The State did so on the basis of a psychological examination conducted by the State's mental health expert on August 16-17, 2006, in connection with court-ordered discovery in the federal proceeding, which resulted in a determination that Reid is presently incompetent to waive his appeals under *Rees v. Peyton*, *supra*. The standard of incompetency for "next friend" standing under Tennessee law as set forth by the Tennessee Supreme Court in *Reid v. State*, No. M2005-02398-SC-S10-PD, 2006 WL 1726656 (Tenn. May 4, 2006) (that the petitioner is unable to manage his personal affairs or understand his legal rights and liabilities), was not at issue in the federal habeas proceedings and formed no basis of the State expert's opinion.

⁴The district court entered an order on August 24, 2006, granting Martiniano's motion to hold in abeyance a request to amend Reid's federal habeas petition to include potential post-conviction claims pending this Court's disposition of this appeal. The abeyance request was made, in part, to avoid the pendency of a "mixed" habeas petition, *i.e.*, one containing both exhausted and unexhausted claims.

attack upon Reid's Montgomery County convictions and sentences should proceed. Under these circumstances, there is good cause for this Court to suspend the ordinary rules of procedure and direct that this matter proceed on an expedited briefing and argument schedule. Tenn. R. App. P.

2. For these reasons, the State of Tennessee does not oppose appellant's request that the Court grant an expedited appeal in this matter.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing was served by facsimile and by mailing same, first-class and postage prepaid, to Kelly A. Gleason, Office of the Post-Conviction Defender, 530 Church Street, Suite 600, Nashville, TN 37243, on this, the 28th day of August, 2006.

JENNIFER L. SMITH
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