

Fed. Ex 11-20-14

FILED

2014 NOV 21 AM 9:01

APPELLATE COURT CLERK
NASHVILLE

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

STATE OF TENNESSEE)
)
v.)
)
STEPHEN MICHAEL WEST)

No. M1987-00130-SC-DPE-DD

MOTION TO VACATE EXECUTION DATE

Stephen Michael West respectfully moves this Court to vacate the February 10, 2015 execution date in his case, just as this Court recently vacated the execution dates of Billy Ray Irick and Edmund Zagorski.

1. Stephen West 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 (Chancery Court for the Twentieth Judicial District, Nashville and Davidson County, Tennessee).
2. On December 17, 2013, this Court set an execution date in Stephen West's case for February 10, 2015. At the time the Court set the February execution date, this Court was aware that the Chancery Court had scheduled a July 7, 2014 trial date in the declaratory judgment action and opined that, "a short delay to allow the resolution of the declaratory judgment action challenging the constitutionality of the new lethal injection protocol is appropriate." Order at p. 3.
3. The July trial date did not occur because the State defendants filed an interlocutory appeal from a discovery order issued by the chancery court. On

September 29, 2014, as a result of the defendants' interlocutory appeal in *West v. Schofield*, No. M2014-00320-C0A-R9-CV, the Tennessee Court of Appeals affirmed a chancery court order requiring the defendants to disclose to plaintiffs the identity of those involved in producing, procuring and administering chemicals to be used in lethal injection.

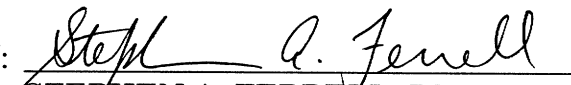
4. On October 8, 2014, the State of Tennessee petitioned this Court for review of the Court of Appeals' decision in *West*. See *West v. Schofield*, No. M2014-00320-SC-R11-CV.
5. On October 21, 2014, this Court granted permission to appeal and set an expedited briefing schedule and oral argument.
6. Appellants/Defendants filed their brief on November 17, 2014, and Appellees/Plaintiffs' brief is due on December 12, 2014. Oral argument is set for December 18, 2014.
7. Given both the Rule 11 schedule in *West v. Schofield* and the need for a reasonable schedule for resolving the pending chancery court action once Rule 11 proceedings conclude, it is not feasible for the issues pending before the chancery court to be finally resolved by February 10, 2015.
8. Given time constraints governing the Rule 11 proceedings in *West v. Schofield*, this Court vacated execution dates for Billy Ray Irick and Edmund Zagorski. See *State v. Irick*, No. M1987-00131-SC-DPE-DD (Tenn. Sept. 25, 2014) and *State v. Zagorski*, No. M1996-00110-SC-DPE-DD (Tenn. Oct. 22,

2014).

9. This Court should follow the same course here. Stephen West's execution is the next one scheduled and those same time constraints are still present.
10. Accordingly, this Court should vacate Stephen West's February 10, 2015 execution date.

Respectfully submitted,

FEDERAL DEFENDER SERVICES
OF EASTERN TENNESSEE, INC.

BY: 
STEPHEN A. FERRELL, BPR # 025170
SUSANNE BALES, BPR # 017868
Assistant Federal Community Defenders
800 South Gay Street, Suite 2400
Knoxville, TN 37929
Office: (865) 637-7979
Fax: (865) 637-7999

CERTIFICATE OF SERVICE

I, Stephen A. Ferrell, hereby certify that the foregoing document is being delivered via email and U.S. mail, first-class, postage prepaid in accordance with Tenn. R. App. P. 20 to:

Jennifer L. Smith
Deputy Attorney General
500 Charlotte Avenue
Nashville, Tennessee 37243-1401
Phone: (615) 741-3487
Fax: (615) 532-4892
Jennifer.Smith@ag.tn.gov

this the 20th day of November, 2014.


Stephen A. Ferrell
Asst. Federal Community Defender