

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED

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

APPELLATE COURT CLERK
NASHVILLE

No. M1987-00130-SC-DPE-DD

RESPONSE OF THE STATE OF TENNESSEE TO
MOTION TO VACATE EXECUTION DATE

By order dated December 17, 2013, this Court set the execution of Stephen Michael West's death sentence for February 10, 2015. West now asks this Court to vacate that order, pointing to the need to resolve ongoing litigation in the Davidson County Chancery Court in which he and other inmates challenge the Department of Correction's protocol for carrying out executions by lethal injection, *Stephen Michael West, et al. v. Derrick Schofield*, No. 13-1627-I (Davidson County Chancery), and the State's pending appeal before this Court arising from an interlocutory order in that case, *Stephen Michael West, et al. v. Derrick Schofield*, No. M2014-00320-SC-R11 (Tenn.). He cites this Court's orders vacating the execution dates of inmates Billy Ray Irick and Edmund Zagorski as support for the request. *State v. Irick*, No. M1987-00131-SC-DPE-DD (Tenn. Sept. 25, 2014); *State v. Zagorski*, No. M1996-00110-SC-DPE-DD (Tenn. Oct. 22, 2014).

The State of Tennessee previously opposed a motion to vacate Irick's execution date on grounds that he had failed to demonstrate a likelihood of success

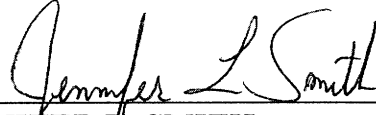
on the merits of the declaratory-judgment action challenging Tennessee's execution protocol, particularly where courts in other jurisdictions have approved the use of substantially similar protocols, and given the "heavy burden" on plaintiffs to establish that a state's execution protocol creates an "objectively intolerable risk of harm" under *Baze v. Rees*, 553 U.S. 35, 53 (2008). See also *West v. Ray*, No. M2010-02275-SC-R11-CV (Tenn. Nov. 6, 2010) (Order, p. 3). Nevertheless, the Court granted the motion while indicating its intention to set a new date of execution following disposition of the State's interlocutory appeal in *West*. *State v. Irick*, No. M1987-00131-SC-DPE-DD (Tenn. Sept. 25, 2014). The Court took similar action on a subsequent motion to vacate filed by Edmund Zagorski. *State v. Edmund Zagorski*, No. M1996-00110-SC-DPE-DD (Tenn. Oct. 22, 2014).

Under these circumstances, and as it did in *Zagorski*, the State does not oppose Stephen West's motion to vacate. The State would request, however, that, just as in *Irick* and *Zagorski*, the Court exercise its authority under Tenn. Sup. Ct. R. 12(4)(E) to set a new date of execution upon final disposition of the State's appeal in *West v. Schofield*, No. M2014-00320-SC-R11-CV (Tenn.).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Motion has been forwarded via email and U.S. mail, first-class postage prepaid, on the 24th day of November, 2014 to: Stephen A. Ferrell and Susanne Bales, Assistant Federal Community Defenders, 800 South Gay Street, Suite 2400, Knoxville, TN 37929.



JENNIFER L. SMITH
Deputy Attorney General